

After Recording Return to:
AXXION DEVELOPMENT, L.L.C.
2658 W 3500 North
Farr West, UT 84404

**FIRST SUPPLEMENTAL DECLARATION & AMENDMENTS OF
COVENANTS, CONDITIONS, AGREEMENTS & RESTRICTIONS**
for
STILLCREEK VILLAGE P.R.U.D.
PHASE 2

A Neighborhood Association within
Stillcreek Village P.R.U.D. Master Community
in Weber County, Utah

THIS FIRST SUPPLEMENTAL DECLARATION OF COVENANTS, CONDITIONS, AGREEMENTS & RESTRICTIONS for Stillcreek Village P.R.U.D. Phase 2, a Neighborhood Association within Stillcreek Village P.R.U.D. Master Community (this "First Supplemental Declaration") is made and executed as of the last date set forth in the notarized signature below, by Axxion Development, L.L.C. (the "Declarant").

RECITALS:

(A) This First Supplemental Declaration is submitted by the Declarant for the purpose of annexing into the Stillcreek Village P.R.U.D. certain portions of the Property known as Stillcreek Villages Phase 2.

(B) This First Supplemental Declaration will take effect on the date recorded at the office of the Davis County Recorder's Office (the "Effective Date").

(C) This First Supplemental Declaration affects and concerns certain real property located in Weber County, Utah and more particularly described as follows (the "Annexed Property"):

All of Lots 129 through 198, Stillcreek Village PRUD, Phase 2, (Homes), Plain City, Weber County, Utah, according to the official plat thereof.

All of Lots 199 through 207, Stillcreek Village PRUD, Phase 2, (Patio Homes), Plain City, Weber County, Utah, according to the official plat thereof.

All of Lots 208 through 239, Stillcreek Village PRUD, Phase 2- "Townhomes", Plain City, Weber County, Utah, according to the official plat thereof.

(D) The Annexed Property is within Stillcreek Village P.R.U.D. Phase 2, a Neighborhood Association within Stillcreek Village P.R.U.D. Master Community subject, except where amended, to that certain Declaration of Covenants, Conditions, Restrictions & Easements for the Stillcreek Village PRUD Master Community recorded January 21, 2009 as Entry No. 2386189, in the Weber County Recorder's Office ("Master Declaration"); and Amendment to the Declaration of Covenants, Conditions, Agreements & Restrictions of Stillcreek Village PRUD Master Community recorded September 25, 2009 as Entry No. 2436375, in the Weber County Recorder's Office ("2009 Amendment"); and Amendment to the Declaration of Covenants, Conditions, Agreements & Restrictions of Stillcreek Village PRUD Master Community recorded December 28, 2011 as Entry No. 2555968, in the Weber County Recorder's Office ("2011 Amendment")

(E) Declarant desires to subject, except where amended, the Annexed Property to the terms of this First Supplemental Declaration, the 2009 Amendment, the 2011 Amendment and the Master Declaration. Declarant intends to develop a residential subdivision on the Property pursuant to the Community Association Act,

Utah Code Sections 57-8a-101, *et. seq.* Declarant will develop and convey all of the Units within the Annexed Property subject to a general plan of development, and subject to certain protective covenants, conditions, restrictions, and easements, as set forth in this First Supplemental Declaration, as amended from time to time, which are deemed to be covenants running with the land mutually burdening and benefitting each of the Lots within the Property. Common Areas and Limited Common Areas are those areas that are depicted in the recorded Plat(s), as amended, and as described in the declarations.

(F) Declarant reserves the right to develop additional phases within the Property pursuant to the Community Association Act and declarations, which Subdivision does not constitute a cooperative.

(G) Declarant declares that the Annexed Property shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied, and improved, subject to the following easements, restrictions, covenants, conditions and equitable servitudes, all of which are for the purpose of uniformly enhancing and protecting the value, attractiveness and desirability of the Annexed Property, in furtherance of a general plan for the protection, maintenance, subdivision, improvement and sale of the Annexed Property or any portion thereof. The covenants, conditions, restrictions, reservations, easements, and equitable servitudes set forth herein shall be binding up all persons having any right, title or interest in the Annexed Property or any part thereof, their heirs, successors and assigns and shall inure to the benefit of every portion of the Annexed Property and any interest therein; and shall inure to the benefit of and be binding upon Declarant, and its successors in interest; and may be enforced by the Declarant and by the Association.

(H) Annexed Property shall be subject to the following provisions of the Master Declaration, 2009 Amendment and 2011 Amendment: Articles VI, VII, VIII, IX

(I) Notwithstanding the foregoing, no provision of this Declaration shall prevent the Declarant from doing any of the following, which shall be deemed to be among Declarant's reserved rights in addition to such rights as may be described elsewhere in this Declaration: (1) installation and completion of the Subdivision Improvements; (2) use of any Lot owned by the Declarant as a model home, or for the placement of a temporary construction or sales office; (3) installation and maintenance of signs incidental to sales or construction which are in compliance with applicable City or County ordinances; (4) assignment of Declarant's rights under this Declaration in whole or part; and (5) retention of Declarant's rights with respect to subsequent phases of the Subdivision. This Declaration shall be binding upon the Declarant, as well as its successors in interest, and may be enforced by the Declarant or the Association. A supplemental declaration, with such modifications or supplemental provisions as may be deemed appropriate by Declarant on a phase-by-phase basis, may be recorded to address differences in the circumstances affecting any Lots to be constructed after the initial phase.

I. DEFINITIONS

As used in this Neighborhood Declaration (including the "Recital" section above) each of the following terms shall have the indicated meaning:

1.1 The term **Area of Common Master Responsibility** shall mean and refer to the area for which the SVM-HOA is responsible to maintain, repair, replace, administer and regulate, including the Master Common Area and Facilities, if any.

1.2 The term **Area of Common Phase & Type Responsibility** shall mean and refer to the area for which the SV2-HOA is responsible to maintain, repair, replace, administer and regulate, including the Phase 2 Common Area and Facilities, if any.

1.3 The term **Area of Personal Responsibility** shall mean and refer to the area privately owned property or Limited Common Area for the exclusive use of the Owner, and for which the Owner is responsible to maintain, repair and replace, unless the maintenance, repair and replacement for such privately owned area has been delegated in this Declaration to the SV2-HOA or SVM-HOA.

1.4 The term **Benefited Expense** shall mean, to the extent consistent with Article IV, Section 4.4 below, an expense permitted by each Type to, with the prior written consent of the SV2-HOA, elect, at its sole expense and for its benefit, upgrade its Type, or any part thereof. Such expenses shall be exclusive to the Type so benefited and shall not be considered part of the Neighborhood or Master Operating Expenses.

1.5 The term **Board of Directors** shall mean and refer to the Board of Directors of the SV2-HOA, appointed or elected in accordance with this Neighborhood Declaration and the Bylaws.

1.6 The term **Builder** shall initially mean and refer to Scott's Home Construction, LLC & Lifestyle Homes, LLC.

1.7 The term **City** shall mean and refer to Plain City in Weber County, Utah.

1.8 The term **Covenant to Share Costs** shall mean and refer to the obligations set forth in this Neighborhood Declaration and any other covenant to share costs executed by the Developer or the SV2-HOA which creates easements for the benefit of the SV2-HOA, Owners and Members, subject to such Covenant to Share Costs, and/or which obligates the SV2-HOA to share the costs of maintaining certain real, personal or mixed property described therein.

1.9 The term **Declarant** shall mean and refer to Axxion Development, L.L.C.

1.10 The term **Dedicated Streets** shall mean and refer to those streets within the Project formally dedicated to the City or any other municipal or governmental body politic, entity or agency.

1.11 The term **Design Guidelines** shall mean the Design Guidelines and attached hereto as Exhibit "C" and incorporated herein by this reference, and as they may be modified by the Board from time to time. The Association is hereby

given permission to make decisions based purely on aesthetic considerations.

1.12 The term **Developer** shall mean and include Axxion Development, L.L.C., its affiliates, successors and assigns, if any, who have expressly accepted the role of Developer and any Person or Persons who might acquire title from said parties to all or some of the unsold Lots or Dwelling Units through purchase, assignment or other transfer including foreclosure or deed in lieu of foreclosure. The person/entity acquiring any of such property from the Declarant shall be considered a Developer with respect to that portion of the property so acquired and shall have the right to develop the property and/or sell such property in accordance with the terms and provisions of this Neighborhood Declaration and any Supplemental Declaration applicable to the property; provided, however, a notice of succession shall be recorded in the Office of the County Recorder signed by both the current Declarant, or its successor in interest, and the new Developer with respect to such property.

1.13 The term **Developmental Rights** shall mean and refer to the right granted hereunder to the Developer, its agents, representatives, employees, successors and assigns, to develop and improve Stillcreek Village Phase 2.

1.14 The term **Dwelling Unit** shall mean an improvement upon a Lot, including but not limited to, a detached living structure or an attached living structure (i.e., a townhome joined by a common party wall, etc.) intended for the occupancy and use by a single family.

1.15 The term **Entry** shall mean the entry way into the Property or Neighborhoods.

1.16 The term **Entry Monument** shall mean the monument, planter boxes, landscaping features and other physical improvements identifying the Property or Type located at or near their Entry or entrance.

1.17 The term **Guest** shall mean and refer to a family member, guest, invitee, licensee, and any person or occupant accompanied by a Member, or unaccompanied, who utilizes the rights of the Member in and to the Neighborhood Common Area and Facilities or Type Common Area and Facilities.

1.18 The term **Individual Assessments** shall mean and refer to an assessment levied by the SV2-HOA against an Owner or a group of Owners as the situation may require, for all expenses, costs, charges, fines, and attorney's fees resulting from the act or omission of such Owner(s), their guests, tenants or invitees or resulting from corrective action taken by the SV2-HOA against the Owner(s) or the Owner's guests, excepting the Owner's failure to pay any Assessment. Individual Assessments shall include, by way of illustration but not limitation, any expense resulting from the act or omission of any Owner or guest, tenant, invitee including but not limited to:

1.18.1 The act or negligence of any guest shall be deemed to be the act or negligence of the Owner responsible for the guest.

1.18.2 The cost to repair any damage to any portion of the Common Area and Facilities or Type Common Area and Facilities on account of loss or damage caused by such Owner or guest; or

1.18.3 Any sales tax, use tax or other tax levied pursuant to the laws of the State of Utah and payable by any Owner or Guest which the SV2-HOA is

or shall be required or entitled to collect on behalf of the levying authority, although this subsection is not considered an acknowledgment that any such tax may be levied.

1.18.4 Individual Assessments are secured by a lien in the same manner as other Assessments, as set forth below. The SV2-HOA also shall have all other remedies, both legal and equitable, described in this Neighborhood Declaration available against any Owner for nonpayment of such Owner's other monetary obligations.

1.19 The term **Landscaping** shall mean and refer to the decorative rock, grass, trees, shrubs, bushes, flowers, plants, and like improvements located within the Neighborhood or Types, as well as the appurtenant sprinkling and irrigation systems.

1.20 The term **Lender** shall mean and refer to a Mortgagee.

1.21 The term **Lot** shall mean and refer to a portions of Phase 2 intended for any type of independent private ownership and use as may be set out in this Neighborhood Declaration and as shall be shown on the Plat Map filed in conjunction with this document, or any amendments or supplements thereto. Where the context indicates or requires, the term Lot includes a Dwelling Unit or any other physical structure or improvement constructed upon the Lot.

1.22 The term **Lot Number** shall mean and refer to the number, letter or combination thereof designating a particular Lot.

1.23 The term **Master Assessment** shall mean and refer to the charge for maintenance, repair, replacement, operation and administration assessed each Owner and/or Dwelling Unit or Lot by the SVMOA to pay the Master Operating Expenses, and shall include an amount to fund an adequate reserve fund or funds.

1.24 The term **Master Association** or **SVMOA** shall mean and refer to the Stillcreek Village Master Homeowners Association. The SVMOA shall own common areas and facilities as indicated on the Plat. The SVMOA may own other real and personal property not described herein.

1.25 The term **Master Declaration** shall mean and refer to the Declaration of Covenants, Conditions, Restrictions & Easements for the Stillcreek Village PRUD Master Community recorded January 21, 2009 as Entry No. 2386189, in the Weber County Recorder's Office.

1.26 The term **Master Operating Expenses** shall mean and refer to the common expenses of maintaining, repairing, replacing, and operating the common areas and facilities as indicated on the Plat(s) and administering the SVMOA. Unless an expense is deemed an Individual Assessment, Neighborhood Assessment, Type Assessment or Benefited Assessment, as defined herein, then all expenses shall be a Master Operating Expense.

1.27 The term **Member** shall mean and refer to a Member of the SV2-HOA. Every person or entity owning a Lot or Dwelling Unit shall be a member of the SV2-HOA. The term "Member" shall not include any Mortgagee (unless such Mortgagee has acquired title for other than security purposes).

1.28 The term **Mortgage** shall mean and refer to any mortgage, deed of

trust or other security instrument (including the seller's rights under a contract for deed) by which a Lot or Dwelling Unit or any part thereof or interest therein is encumbered. A First Mortgage is a Mortgage having priority as to all other Mortgages encumbering a Lot or Dwelling Unit, or any part thereof or interest therein.

1.29 The term **Mortgagee** shall mean and refer to any person or entity named as the mortgagee, beneficiary or holder of the seller's interest (so long as in the case of the latter a copy of the contract for deed is given to the SV2-HOA) under any Mortgage by which the interest of any Owner is encumbered, or any successor to the interest of such person under such Mortgage. A First Mortgagee shall mean and refer to any person or entity holding a First Mortgage including any insurer or guarantor of a First Mortgage, Any and all Mortgagee protections contained in the Neighborhood Declaration shall also protect the Developer as the holder of a First Mortgage of a Lot or Dwelling Unit, or any interest therein.

1.30 The term **Neighborhood** shall mean and refer to all the Lots and Neighborhood Common Area on the SV2 Plat.

1.31 The term **Neighborhood Association** shall mean and refer to an association of property owners having jurisdiction, in whole or in part, over the Neighborhood.

1.32 The term **Neighborhood Assessment** shall mean and refer to an assessment levied by the SV2-HOA for maintenance items that only affect and benefit the entire Neighborhood. Neighborhood Assessments are similar to Type Assessments but are levied against the entire Neighborhood as opposed to a type therein. Neighborhood Assessment shall be collected as any other assessment described in this Neighborhood Declaration; and may include the Master Assessment.

1.33 The term **Neighborhood Common Area and Facilities** shall mean and refer to all common elements, private streets, areas and facilities in the Neighborhoods, including by way of illustration but not limitation all of the land, buildings, space and improvements not privately owned or dedicated to the City.

1.34 The term **Neighborhood Common Area Manager** shall mean and refer to the person, firm or company designated by the SV2-HOA to manage, in whole or in part, the affairs of the SV2-HOA and the Neighborhood Common Area and Facilities.

1.35 The term **Office of the County Recorder or County Recorder** shall mean and refer to the Office of the County Recorder of Weber County, Utah.

1.36 The term **Patio Home** shall mean and refer to a residential Lot or Dwelling Unit as shown on the Plat Map and which shall include fee title to the real property lying directly below said single family Lot or Dwelling Unit and such other real property as shown on the Plat Map, if any there be.

1.37 The term **Period of Developer's Control** shall mean and refer to the period during which the Developer or Builder(s) owns any Lots, and otherwise direct and control the development, management and operation of the Project. The Period of Developer's Control shall expire upon the first to occur of the following: (a) Ninety days after Developer sells its last Lot or Dwelling Unit in Phase 2 or property which

may be later annexed to this Project; or (b) when, in its discretion, the Developer so determines and records in the Office of the County Recorder a written "Notice of Termination of Period of Developer's Control."

1.38 The term **Phase Common Assessment** shall mean and refer to the amount imposed upon, assessed or charged an Owner or Member by the SV2-HOA.

1.39 The term **Plat** or **Plat Map** shall mean and refer to the Plat Map or Maps showing property subjected to this Neighborhood or Master Declaration, and any amendments or supplements thereto.

1.40 The term **Private Street, Road, Cul-de-sac, Way or Drive** shall mean and refer to those streets, roads, cul-de-sacs, ways, drives or turnabouts, if any, within the Project not dedicated to the City or any county, state, or other governmental body politic, entity or agency.

1.41 The term **Project** shall mean and refer to the Neighborhood, Types, Lots, Dwelling Units, Common Area and Facilities, Exclusive Common Area and Facilities, and all improvements submitted to this Neighborhood Declaration.

1.42 The term **Residence Number** shall mean and refer to the number, letter or combination of name, numbers and letters that identifies only one Lot or Dwelling Unit in the Project.

1.43 The term **Residential Dwelling Unit** shall mean and refer to a residential Lot or Dwelling Unit in the Project. Only single family residences are permitted in the Project.

1.44 The term **Single Family** shall mean that each Lot or Dwelling Unit shall be occupied only by a single family, to wit: No one shall be entitled to reside in a residence constructed on a Lot unless he or she is a member of the immediate family therein residing, or are authorized foster children or wards. No boarding houses or other group housing for unrelated people of any kind is allowed regardless of the method or structure of the occupancy arrangement.

1.45 The term **Single Family Residence** ("SFR") shall mean and refer to both the architectural style of a Dwelling Unit and the nature of the residential use permitted,

1.46 The term **Size** shall mean and refer to the square footage of a Dwelling Unit or Lot, rounded to the nearest whole number ending in zero. Size shall be computed and determined on the basis of dimensions shown on the Survey Map or Maps. So long as the measurement substantially complies with the provisions of this section and is not arbitrary, the Association's determination of Size shall be conclusive,

1.47 The term **Special Neighborhood Assessments** shall mean and refer to assessments which the SV2-HOA may levy from time to time against all Lots and Dwelling Units in the Project, in addition to the Neighborhood or Type Assessments, for unexpected Neighborhood Operating Expenses, major Repairs, Capital Improvements and Additions, or other purposes as provided herein.

1.48 The term **Total Votes of the SV2-HOA** shall mean and refer to the total number of votes appertaining to all Lots, Dwelling Units or Developer's

interests.

1.49 The term **Townhouse** shall mean and refer to a residential Lot or Dwelling Unit as shown on the Plat Map, with or without walls or roofs in common with other single family Lots or Dwelling Units and which shall include fee title to the real property lying directly below said single family Lot or Dwelling Unit and such other real property as shown on the Plat Map, if any there be.

1.50 The term **Type** shall mean and refer to any residential area within the Project which is designated as a Type, whether or not governed by a Type Association. By way of illustration and not limitation, a neighborhood of single family residences, townhomes, and patio homes might each be designated as a separate Type.

1.51 The term **Type Association** shall mean and refer to an association of property owners having jurisdiction, in whole or in part, over a specific Type concurrent with, but subordinate to, the SV2-HOA. As stated above, however, no Type Association is required for any Type, but may be established if deemed necessary pursuant to this Neighborhood Declaration.

1.52 The term **Type Assessment** shall mean and refer to an assessment levied by the SV2-HOA against a Type for maintenance items that only affect and benefit a distinct Type. Type Assessments are similar to Neighborhood Assessments but are levied against an entire Type as opposed to an individual therein. Type Assessments shall be collected as any other assessment described in this Neighborhood Declaration.

1.53 The term **Type Common Area** shall mean and refer to that portion of the Common Area and Facilities intended for the exclusive use or primary benefit of one or more, but less than all, Types. Type Common Area shall be owned by the SV2-HOA.

1.54 The term **Unit** or **Attached Dwelling Units** shall mean and refer to all attached Dwelling Units within the Project which shall be a separate physical part of the Property intended for independent use, including one or more rooms or spaces located in one or more floors or part or parts of floors in a building. Mechanical equipment and appurtenances located within any one Unit, or located without said Unit but designated and designed to serve only that Unit, such as appliances, electrical receptacles and outlets, air conditioning compressors, furnaces, water heaters, apparatus, systems or equipment, fixtures and the like, shall be considered part of the Unit; so shall all walls, floors and ceilings, roofs, exterior surfaces of all kind, including but not limited to all paint, wallpaper, wall coverings, windows and window frames, doors and doorframes, trim, carpeting, tile and linoleum. All pipes, wires, conduits, or other utility lines or installations constituting a part of the Unit or serving only the Unit, and any structural members, parts, components or any other property of any kind, including fixtures appliances within any Unit, which are removable without jeopardizing the integrity, soundness, safety or usefulness of the remainder of the Building within which the Unit is located shall be deemed to be part of the Unit. The maintenance responsibility for a Unit or Attached Dwelling Unit shall be assigned as set forth in this Declaration.

1.55 The term **Use Restrictions** shall mean and refer to the rules, regulations and use restrictions described with particularity in this Declaration, as they may be modified, amended, repealed, canceled, limited, withdrawn or expanded from time to time.

1.56 The term **Voting Group** shall mean and refer to a group of Owners or Types designated by the Developer as a voting group.

II. INCIDENTS OF OWNERSHIP

2.1 **Types of Ownership.** The Developer desires to create within the Project the ownership of a Residential Lots and/or Dwelling Units. Anything to the contrary notwithstanding, the Developer expressly reserves the right to create such different types of ownership as Developer in its sole discretion deems necessary or desirable and shall not be obligated to create any specific ownership types.

2.2 **Membership in the SV2-HOA.** Membership in the SV2-HOA is appurtenant to and cannot be separated from a Lot or Dwelling Unit.

2.3 **Assignment or Transfer of Memberships in the SV2-HOA.** Any attempt to assign, transfer, pledge, alienate, subdivide or partition a membership in violation of this Section shall be voidable by Developer or SV2-HOA.

2.4 **Description and Ownership of Common Area and Facilities.** The Common Area and Facilities shall mean and include all of the Property not privately owned nor dedicated to the City or an individual. The Common Area and Facilities are designated on the Plat. Neighborhood Common Area and Facilities and Limited Common Area are also designated on the Plat.

2.5 **Description of Limited Common Area and Facilities.** Limited Common Area and Facilities shall mean a portion of the Common Area and Facilities reserved for the use of certain Owners to the exclusion of other Owners, including but not limited to any porches, decks, balconies, foyers, storage closets, hot tubs, patios, attics, and other areas as indicated by this Neighborhood Declaration or the Plat to be for the exclusive use of one or more but fewer than all of the Lots or Dwelling Units. Mechanical systems or utility closets serving only the certain Lots or Dwelling Units, if any, shall be Limited Common Area and Facilities with respect to the Lots or Dwelling Units which they serve. The Limited Common Area and Facilities shall be those areas designated as such on the Plat or in this Neighborhood Declaration. The use and occupancy of designated Limited Common Area and Facilities shall be reserved to the Lots or Dwelling Units to which such Limited Common Area is adjacent, unless otherwise shown on the Plat or as specified in this Neighborhood Declaration. Owners may not reallocate Limited Common Area and Facilities between or among Lots or Dwelling Units in which they have an interest.

2.6 **Land Subject to Public Utilities and Drainage Easements.** All Common and Limited Common Area and private drives shown on the final Plat are subject to public utilities and drainage easements for the installation and maintenance of improvements and such easements shall be subject to the right of the City to require the Association to assess its members to repair streets, landscaping, etc., where needed to repair or replace the public utilities.

2.7 **Rock Walls.** All rock walls on private Lots, if any, are privately owned and shall be maintained by the Owner thereof. All rock wall repairs and maintenance shall be the responsibility of the Owner, if located upon private property, or the Association, if located upon Common Area. Each Owner and/or the Association shall indemnify and hold harmless the City, its officers, boards, employees, agents and assigns, from any and all claims resulting from rock walls located within this

Neighborhood in particular and the Project generally.

2.8 Developmental Rights. The following Developmental Rights are hereby granted to or reserved by Developer:

2.8.1 Easements. Developer is hereby granted an easement throughout the Project for a period twenty (20) years from the recording of this Neighborhood Declaration for the purpose of completing all improvements contemplated by the Neighborhood Declaration and the Plat, including but not limited to improvements to any land annexed.

2.8.2 Construction of Improvements. Developer is hereby granted the right, but is not obligated to construct any improvements shown on the Plat; and any other buildings, structures or improvements that Developer desires to construct on the Property, or any other real estate owned by Developer, regardless of whether the same ever become part of the Project.

2.8.3 Use of Lots/Dwelling Units as Sales Office. Developer is hereby granted the right to maintain sales offices, management offices, signs advertising the Project and models in any of the Dwelling Units which it owns or leases or on the Common Area and Facilities of the Project for so long as Declarant is an Owner within the Project. All Developer installed signage shall comply with county regulations, as the same may be changed from time to time. Developer shall be entitled to utilize, at any one time, any number of Lots or Dwelling Units which it owns or leases and some or all of the Common Area and Facilities as sales offices, management offices, and models anywhere in the Project. Developer may relocate sales offices, management offices and models to other Dwelling Units or Common Area and Facilities at anytime. Notwithstanding an Owner's right to resell his Lot or Dwelling Unit and list such Lot or Dwelling Unit with any firm or agency as he shall determine, no person or entity other than Developer and/or its duly appointed affiliates, successors, agents or assigns, shall have the right to market or initially sell Lots or Dwelling Units within the Project. Sales offices and model lots and/or Dwelling Units, whether owned by the Developer or another entity or person(s), shall be exempt from all assessments while aiding Developer's sales efforts.

2.8.4 Modifications to Property. Notwithstanding anything to the contrary contained in this Neighborhood Declaration, Developer may unilaterally, in its sole discretion make such alterations, changes or modifications to any property, Lot or Dwelling Unit owned by Declarant or the adjacent Common Area and Facilities or Exclusive Common Area and Facilities, as Developer deems necessary or appropriate, including but not limited to, the creation or removal of interior walls and modifications to plumbing and electrical systems.

2.8.5 Project Name Change. During the Period of Developer's Control, Developer hereby reserves the right to unilaterally change the name of the Project or a Type or to modify the Plat.

2.8.6 Developmental Rights. Neither the SV2-HOA, Neighborhood Association, Board of Directors, or any Committee, nor any Owner or Member may take any action or adopt any rule or regulation that interferes or diminishes any Developmental Rights hereunder, without Developer's express prior written consent, and any action taken in violation of this Section shall be null and void and have no force or effect.

2.9 Area of Application. This Neighborhood Declaration shall apply the entire Project, to all of the Types, and any annexations or additions thereto.

2.10 **Right to Expand Application, Withdraw Land, Reconfigure Structure, or Change the Nature of the Use.** Without any other additional approval required the Developer reserves and is hereby granted and shall have the unilateral right to expand, withdraw, reconfigure or change the nature of use, of this land.

2.11 **Bylaws.** The initial Bylaws of the Association shall be adopted by the Board of Directors and are attached hereto as Exhibit "B."

2.12 **Type Associations.** The Board of Directors has the right to require any Type to form a sub-association which shall assist, but be subordinate to, the SV2-HOA. Membership in such a Type Association will be mandatory and all members of the Type will automatically become a member of the Type Association. Type Associations may contain additional covenants, conditions and restrictions, including assessment obligation in addition to those of the SV2-HOA. Type-Associations, however, are not planned and are not be required.

III. VOTING

3.1 **Voting.** The Owner of each Lot or Dwelling Unit shall be entitled to one vote for each Lot or Dwelling Unit owned, regardless of size or value. The voting rights appurtenant to each Lot, Dwelling Unit or Membership shall vest upon execution and recording of this Neighborhood Declaration.

3.2 **Classes of Membership/Voting Rights.** The membership of the Neighborhood Association shall consist of all Owners within the Neighborhood, as defined in the Neighborhood Declaration or Supplemental Declaration. At any meeting of the Neighborhood Association, each Owner shall be entitled to cast votes pursuant to the classes of voting memberships set forth herein. The classes of voting memberships shall be as follows:

Class A: The Owner of each Lot or Dwelling Unit, as shown on the Plat Map, improved with a residence or designated for residential use shall be authorized to cast one (1) vote for each Lot or Dwelling Unit owned. Townhomes shall be classified as Lots and therefore, the Owners of each townhouse may cast one (1) vote per townhouse owned.

Class B: The Class B member is the Developer and any successor of Developer who takes title for the purpose of development and sale of Lots and/or Dwelling Units and who is designated as such in a recorded instrument. The Class B Member shall be authorized to cast ten (10) votes per Dwelling Unit and/or Lot owned. The Class B membership and the Class B Control Period shall terminate, and the Class B membership shall convert to Class A membership, upon termination of the Period of Developer's Control.

IV. EASEMENTS

4.1 **Grant of Easement.** Declarant hereby grants to Developer and also grants to the SV2-HOA, nonexclusive, perpetual rights-of-way and easements over, across and through the Neighborhoods, together with the right to use, operate,

maintain, repair and replace the Common Area and Facilities and Exclusive Common Area and Facilities, subject to all of the terms, covenants, conditions and restrictions set forth herein.

4.2 Common Use of Easement. Said easement is to be used in common for ingress and egress over the Common Area by the Developer and each Type and its Owners, subject to all of the terms, covenants, conditions and restrictions set forth herein.

4.3 Private Easement. The easement created is intended to be used as a private non-exclusive easement for the exclusive use and benefit of Developer, each Neighborhood and its Owners.

4.4 Benefited Expense Regarding Landscaping. Each Type is hereby empowered to and may, with the prior written consent of the SV2-HOA, elect, at its sole expense and for its benefit, to upgrade its Type, or any part thereof (the "Benefited Expense"), although such Benefited Expense shall not be considered part of the Neighborhood Operating Expenses.

4.5 Encroachments. If any part of the Common Area and Facilities or Exclusive Common Area or Facilities encroaches or shall hereafter encroach upon a Lot or Dwelling Unit or Lots or Dwelling Units, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Lot or Dwelling Unit encroaches or shall hereafter encroach upon the Common Area and Facilities, or upon an adjoining Lot or Dwelling Unit or Lots or Dwelling Units, an easement for such encroachment and for the maintenance of the same shall and does exist. Such easements shall extend for whatever period the encroachment exists. Such encroachments shall not be considered to be encumbrances either on the Common Area and Facilities or the Lots or Dwelling Units. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of any improvement constructed or to be constructed within the Project, by error in the Plat, by settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project or any part thereof.

4.6 Improvements. Improvements, including Lots or Dwelling Units, Common Area and Facilities, Exclusive Common Area and Facilities and Limited Common Area and Facilities, constructed as subsequent phases of the Project may encroach upon portions of the Common Area and Facilities of earlier phases of the Project. A perpetual easement for such encroachment and this Neighborhood Declaration necessary to repair, maintain and operate such improvements is hereby granted.

4.7 Rights of Access. Each Owner shall have the right to ingress and egress over, upon and across the Common Area and Facilities as necessary for access to the Lot or Dwelling Unit he is occupying and to any Limited Common Area and Facilities appurtenant to his Lot or Dwelling Unit, and he shall have the right to the horizontal, vertical and lateral support of his Lot or Dwelling Unit. Types may have Exclusive Common Area and Facilities for the Benefit of one or more, but not all, Neighborhoods.

4.8 Developer's Easement. The SV2-HOA hereby grants and conveys to the Developer an exclusive easement to make such use of the Common Area and Facilities and Exclusive Common Area and Facilities, as may be necessary or convenient to perform the duties and functions that each is obligated or permitted to

perform pursuant to this Neighborhood Declaration, including, without limitation, the right to construct the Common Area and Facilities for use by the Owners and Members.

4.9 **Construction Easements.** The Declarant hereby grants to Developer and its affiliates and assignees a temporary construction easement over the Common Area and Facilities and Exclusive Common Area and Facilities for the purpose of doing all things that are reasonably necessary as a part of constructing any new improvements for the Project including all physical improvements as well as all Lots, Dwelling Units, Common Area and Facilities, Limited Common Area and Exclusive Common Area and Facilities. The Owners of Lots and Dwelling Units do hereby acknowledge and agree that there will be construction activities, traffic, noises, odors and vibrations which may temporarily disrupt their quiet enjoyment of their Lots, Dwelling Units and the Common Area and Facilities, and Exclusive Common Area and Facilities until all improvements are complete, and such Owners do hereby waive any right to object to such construction activity; provided, however, Developer shall endeavor to use reasonable efforts to minimize the adverse impact of such construction activities on the Owners of Lots, Dwelling Units and Common Area and Facilities and Exclusive Common Area and Facilities in the Project. Developer's construction activities pursuant to the easement granted hereunder shall not be deemed to be a violation of the Use Restrictions.

4.10 **Locations Facilities Easements.** Declarant grants Developer a non-exclusive easement for itself and its affiliates and assignees to construct, operate, maintain, repair and replace all types of telecommunication facilities, including but not limited to roof antennas, within suitable locations for such facilities (the "Locations of Facilities") within the Project. Declarant further grants Developer a right of access to the Locations of Facilities over, across, and through all other Common Area and Facilities and Exclusive Common Area and Facilities of the Project in order to access the Locations of Facilities to exercise the rights established herein. Declarant grants Developer the perpetual right to transfer by easement, license agreement or other conveyance the rights granted hereunder to one or more telecommunication facilities providers. Developer may exercise all of such rights unilaterally and without the consent of any Owner, Mortgagee or the SV2-HOA. The SV2-HOA, on behalf of all Owners, agrees to execute such further and additional instruments as may be requested by Developer documenting the rights hereunder, in form satisfactory to the Developer, and any assignee of its rights hereunder.

4.11 **Entry Monument.** Declarant grants Developer a non-exclusive easement for itself and its affiliates and assignees to construct, operate, maintain, repair and replace the Entry Monument.

4.12 **Parking:**

4.12.1 **Parking Rules.** The parking rules and regulations may, among other things, regulate times, areas, location and assignment of parking spaces on public and private streets and may be enforced by the SV2-HOA on both the public and private streets.

4.12.2 **Reserved Parking Spaces.** The Board of Directors may assign parking spaces in the Common Area and Exclusive Common Area to facilitate the use and demands of the Lots and Dwelling Units, and, among other things, may reserve spaces for a particular Type, may create tow, automatic tow and other zones, and may adopt parking rules and regulations.

4.12.3 Authority of Developer and Board of Directors. The Developer prior to the expiration of the Period of Developer's Control or thereafter the Board of Directors, shall have the right, power and authority to unilaterally relocate, reallocate and/or reconfigure any and all the easements or licenses or parking assignments described in this Neighborhood Declaration from time to time as it sees fit, and without the consent of any Owners.

4.13 Developer's Non-Exclusive Easement. Declarant grants Developer a nonexclusive easement for itself and its affiliates and assignees over, through and under the Property for ingress to, egress from, and installation of all utility and service lines and systems, including, without limitation, water, sewer, gas, telephone, electricity and cable communication that service the Property or any portion thereof as well as any such lines and systems which service property owned by the Developer. Upon installation of such utilities the responsibility to repair, maintain and replace the utilities shall be assumed by the SV2-HOA or the City or other public or quasi-public entity having jurisdiction over the utility.

4.14 Reservation of Rights. All conveyances of Lots or Dwelling Units within the Project hereafter made, whether by Developer or otherwise, shall be construed to grant and reserve such easements and/or licenses as are provided herein, even though no specific reference to such easements appears in any such conveyance.

4.15 Common Area Repairs. All common areas shown on plats are subject to public utilities and drainage easements for the installation and maintenance of improvements and such easements shall be subject to the right of the City to require the homeowners association to assess its members to repair streets, landscaping etc., where needed to repair or replace the public utilities.

V. NOTICES

5.1 Notices. Any notice permitted or required to be delivered as provided herein may be delivered either personally, by first class mail, by express mail or overnight courier service providing proof of delivery, or by electronic transmission. Notice to Owners shall be addressed to each Owner at the address given by such Owners to the Board of Directors for the purpose of service of such notice or to the Lot or Dwelling Unit of such Owner if no such address has been given to the Board of Directors. Notice shall be deemed given when actually received if personally delivered or sent by overnight courier; if faxed, when the fax is received, except that if the fax is received at a time other than the normal business hours of the office at which it is received, on the next regular business day; and if by mail, the earlier of the day actually received or the third business day after the notice is deposited in the Lot or Dwelling United States Mail, properly addressed and postage prepaid. Such address may be changed from time to time by notice in writing to the Board of Directors.

VI. INSURANCE

6.1 Insurance. The Board of Directors may adopt General Insurance House Rules, Policies and Procedures intended as a guide for owners and residents in order to maintain the insurability of the Project, keep the insurance premium

reasonable, and enforce the maintenance responsibilities of the individual owners.

6.2 **Insurance Obligation of the Association.** The Association shall obtain the following insurance coverage (collectively, "Association Master Policy"):

6.2.1 **Public Liability.** Public liability coverage for the Common Area and Facilities;

6.2.2 **Common Area and Facilities.** Property, fire and extended hazard coverage for all Common Area, Elements and Facilities;

6.2.3 **Buildings and Dwelling Units.** Property, fire and extended hazard coverage for all Buildings that contain more than one Dwelling Unit (Townhomes) for the full replacement value thereof, including any improvement which is a permanent part of a Building and is considered Common Area, Elements and Facilities. Those owners who reside in a Building containing more than one Dwelling Unit for which the Association pays the property, fire and hazard insurance, shall be individually assessed for this increase in Association expenses;

6.2.4 **D&O Insurance.** Directors and officers coverage; and

6.2.5 **Fidelity Bond.** A fidelity bond.

NOTICE: The Association Master Policy **does not** cover the contents or the personal property in the Dwelling Unit or belonging to the Dwelling Unit Owner or renter (as defined below), or personal liability. Coverage C (as that term is defined by the standard homeowners insurance policy) - Personal Property is excluded from the Association Master Policy. The Association **is not required** to cover property, fire or hazard insurance on a Dwelling Unit for loss of business, rents or rental income although it expressly reserves and is hereby granted the right to obtain such and other coverage for its benefit.

6.3 **Minimum Amount of Insurance Coverage.** The liability insurance purchased by the Association shall be in an amount not less than \$1,000,000.00 per occurrence and \$2,000,000.00 per aggregate and optional umbrella liability coverage to be determined by the Board of Directors from time to time for bodily injury, death, and property damage. This amount may be increased or decreased unilaterally by the Board of Directors.

6.4 **Name Association as "Loss Payee" or "Additional Insured."** Any insurance policy obtained independently by a Type Association, if any, shall name the SV2-HOA as a certificate holder, additional insured and/or loss payee if applicable.

6.5 **Premium a Common Expense.** The premiums for insurance coverage and the fidelity bond are to be considered a Common Expense.

6.6 **Insurance Obligation of Owners.** The foregoing obligation and right of the Association to purchase insurance coverage does not preclude the right or negate the obligation of each Owner to insure his own Lot and/or Dwelling Unit for his benefit. **EXCEPT AS PROVIDED FOR IN SECTION 6.2.3 ABOVE, EACH OWNER SHALL OBTAIN AT LEAST THE FOLLOWING INSURANCE**

COVERAGE (collectively, "Owner Policy"):

6.6.1 **Public Liability Insurance.** Public liability coverage for his/her Lot and/or Dwelling Unit. The limits of this public liability insurance policy shall be in an amount not less than \$500,000.00 for bodily injury, death and property damage.

6.6.2 **Coverage "A" Building** (as that term is defined by the standard homeowners insurance policy) A coverage "A" building policy in the amount of at least \$100,000.00.

6.6.3 **Individual Owner Insurance.** EXCEPT AS PROVIDED IN SECTION 6.2.3 ABOVE, EACH LOT OWNER SHALL PURCHASE INDIVIDUAL PROPERTY, FIRE AND EXTENDED COVERAGE IN THE AMOUNT RECOMMENDED BY THE OWNER'S INDEPENDENT INSURANCE AGENT, WHICH SHOULD BE AN AMOUNT SUFFICIENT TO REPAIR ANY DAMAGE TO HIS LOT AND DWELLING UNIT.

6.6.4 **Changes in Amounts of Required Insurance.** The amounts of insurance required may be increased or decreased unilaterally by the Board of Directors.

6.6.5 **Coverage C** (as that term is defined by the standard homeowners insurance policy) - **Personal Property/ Contents and Lost Rents.** EACH OWNER IS RESPONSIBLE TO PURCHASE COVERAGE C - PERSONAL PROPERTY INSURANCE COVERING THE CONTENTS OF HIS LOT AND/OR DWELLING UNIT AND LOST BUSINESS, RENTS OR RENTAL INCOME. For use herein the term "contents" shall mean and refer to in the broadest possible sense all furniture, furnishings, appliances, accessories, dining and cooking ware, televisions, stereo equipment, electronic equipment and systems, computers, art, table lamps, linens, blankets, quilts, rugs, lost business, rents, income and profits, personal items not specified in the original design and specifications, and all personal property, belongings and effects in the Lot, Dwelling Unit, Building or Common Area and Facilities not covered by the Master Association Policy.

6.6.6 **Premium Is An Individual Expense.** The insurance premium on the Owner Policy shall be an Individual Expense.

6.6.7 **Maintenance of Coverage.** The Owner shall obtain and keep in full force and effect at all times the required insurance coverage provided by companies duly authorized to do business in Utah.

6.6.7 **Not a Limitation.** The provisions of this subsection shall not be construed to limit the power or authority of the Owner to obtain and maintain insurance coverage in addition to any insurance coverage required hereunder, in such amounts and in such forms as he may deem appropriate.

6.6.8 **Name Association as "Additional Insured."** Each Owner Policy shall name the, Neighborhood Homeowners Association as an "Additional Insured."

6.6.9 **Certificate of Insurance.** Each Owner shall provide the Association with a "Certificate of Insurance" upon request.

6.7 **Owner's Default.** If an Owner fails to obtain his Owner Policy or fails to provide a Certificate of Insurance within three (3) days of a request, and fails to remedy a default within ten (10) days of written notice, the Association may but is not obligated to purchase the required insurance and treat the cost as an Individual Expense. Anything to the contrary notwithstanding, if an Owner fails to obtain his required Owner Policy, then he shall be personally responsible to pay any deductible on the Master Association Policy as well as any and all costs, up the minimum amount of coverage, incurred for repairs of or to the building as defined in Subsections 6.6.2 and 6.6.3 above.

6.8 **Payment of Deductible.** It is presumed that the claimant is responsible to pay the deductible; provided, however, the deductible on a claim made against the Association Master Policy shall be paid for by the party (i) who would be liable for the loss, damage, claim, or repair in the absence of insurance or (ii) from whose Lot and/or Dwelling Unit the causal event originates. In the event of multiple responsible parties, the loss shall be allocated in relation to the amount each party's responsibility bears to the total. If a loss is caused by an act of God or nature or by an element, risk or peril beyond the control of the parties, then the Dwelling Unit Owner shall be responsible for the deductible. It is the intent of the Declarant to obtain property, fire and extended hazard insurance with a \$10,000.00 deductible. This amount may be increased or decreased unilaterally by the Board of Directors upon a written recommendation for its insurance agent without amending the Declaration. Each Owner is encouraged to purchase insurance to cover the cost of the deductible.

6.9 **Damages.** Each Owner is responsible for the maintenance of his Lot and/or Dwelling Unit and for the repair of any damage he causes to another Lot and/or Dwelling Unit or the Common Area and Facilities.

6.10 **Validity of Document.** If any term, part or provision of this document is ruled by a court of competent jurisdiction to be illegal or in conflict with any law of the State of Utah, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the document did not contain such term, part or provision.

6.11 **Right to Adjust Claims.** The Association has the right, power and authority to adjust claims.

6.12 **Use of Insurance Proceeds and Repairs.** Repair of damage shall be completed within a reasonable time and insurance proceeds shall be used to repair the covered damage.

6.13 **Quality of Insurance Company.** The Association and Owners shall use a responsible insurance company or companies duly qualified and licensed in the State of Utah.

6.14 **Primary Coverage.** It is the intent of the Declarant that the Owner's Coverage A - Building provide **primary** coverage and that the Association Master Policy provide **secondary** coverage.

VII. MAINTENANCE

7.1 **Operation and Maintenance of Neighborhood Common Area.** The

SV2-HOA shall have the power, authority, right, and duty to operate, maintain, keep, and replace all Neighborhood Common Area and Facilities and Exclusive Common Area and

7.2 Area of Common Responsibility. The maintenance, replacement, and repair of the Neighborhood Common Area and Facilities and Exclusive Common Area and Facilities, shall be the sole responsibility of the SV2-HOA.

7.3 Incidental Damages. All incidental damages caused to private property by the maintenance, replacement, and repairs of the Neighborhood Common Area and Facilities or utility services shall be repaired promptly and the cost thereof charged as an Operating Common Expense.

7.4 Access Through Neighborhood Common Area. Because some of the Common Area and Facilities and Exclusive Common Area and Facilities are, or may be located within private property or may be conveniently accessible only through such property, the SV2-HOA shall have the irrevocable right to have access to each Lot, Townhouse, or Dwelling Unit and to all Neighborhood Common Area and Facilities and Exclusive Common Area and Facilities from time to time during such reasonable hours as may be necessary for the cleaning, repair or replacement of any Neighborhood Common Area and Facilities and Exclusive Common Area and Facilities or for making any emergency repairs at any time and when necessary to prevent damage either to the Neighborhood Common Area and Facilities or to any Lot, Townhouse or Dwelling Unit.

7.5 Access Through Lots or Dwelling Units. The SV2-HOA shall also have the irrevocable right to have Access to any Lot, Townhouse, or Dwelling Unit when necessary in connection with any cleaning, maintenance, repair, replacement, painting, landscaping, construction, or reconstruction for which the SV2-HOA is responsible or for the purpose of abating a nuisance or a known or suspected dangerous or unlawful condition. Such entry shall be made with as little inconvenience to the Owners as is practicable under the circumstances and any damage caused thereby shall be repaired by the SV2-HOA.

7.6 Maintenance of Attached Townhouses and/or Dwelling Units. The SV2-HOA shall have the power, authority, right, and duty to maintain, keep, and replace all of the exterior elements, excluding glass, doors and electrical and mechanical equipment, of all attached Townhouses and Dwelling Units in a state of good repair and condition. The costs of maintaining, keeping, and replacing such exterior elements shall be assessed to the Type for which such elements are appurtenant as a Type, Benefited and/or Individual Assessment. All incidental damages caused to private property by the maintenance, replacement and repairs of the Exclusive Neighborhood Common Area and Facilities shall be repaired promptly and the cost thereof charged as a Type Expense.

7.7 Damage to Attached Townhouses and/or Dwelling Units. Notwithstanding the foregoing, if all or any portion of an attached Townhouse or Dwelling Unit is damaged or destroyed by fire or other casualty, and the Owner, their guests, invitees and/or tenants, are responsible for such loss or damage, then the Owner, and not the Association, shall be responsible for all such necessary repairs or reconstruction.

7.8 Damage to Detached Dwelling Units - Reconstruction. Owners are responsible for their detached dwelling and Lot. If all or any portion of any Lot or detached Dwelling Unit is damaged or destroyed by fire or other casualty the Owner

of such Lot shall, at the Owner's election, either rebuild, repair, or reconstruct the Lot and the Dwelling Unit in a manner which will restore them substantially to their appearance and condition immediately prior to the casualty, or as otherwise approved by the Board of Directors, or restore the Lot by removing from the Neighborhoods all damaged or destroyed building materials. The Owner of any damaged Lot or Dwelling Unit shall be obligated to proceed with all due diligence hereunder, and such Owner shall cause reconstruction or restoration of the Lot to commence within three (3) months after the damage occurs and to be completed within fifteen (15) months after damage occurs, unless prevented by causes beyond the Owner's reasonable control. A transferee of title to the Lot which is damaged or upon which is located a damaged Dwelling Unit shall commence and complete reconstruction of the Dwelling Unit or restoration of the Lot in the respective periods which would have remained for the performance of such obligations if the Owner of the Lot at the time of the damage still held title to the Lot. However, in no event shall such transferee of title be required to commence or complete such reconstruction or restoration of the Lot or Dwelling Unit in less than thirty (30) days from the date such transferee acquired title to the Lot.

7.9 Party Walls.

7.9.1 General Rules of Law to Apply. Each wall which is built as a part of the original construction of the Dwelling Units upon the Property and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

7.9.2 Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall, including perimeter walls, shall be shared by the Owners who make use of the wall in proportion to such use, or the Owner of the wall even if there is no wall in common.

7.9.3 Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, then, to the extent said destruction or damage is not covered by insurance and repaired out of the proceeds of the same, any Owner who has used the wall shall restore it, and, if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

7.9.4 Weatherproofing. Notwithstanding any other provision of this Article, an Owner who, by his negligent or willful act, causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements to the extent that said protection is not covered by insurance and paid for out of the proceeds of the same.

7.9.5 Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

7.9.6 Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one

arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators. Should any party refuse to appoint an arbitrator within ten (10) days after written request to do so, the Board of Directors of the Association shall select an arbitrator for the refusing party.

7.9.7 **Perimeter Walls.** The SV2-HOA shall not be obligated to maintain any walls in the Project, except walls dividing a Lot and Common Area shall be maintained jointly by the Owner of the Lot and the SV2-HOA or the Neighborhood, as the case may require.

VIII. GRANT OF POWERS, OFFICERS, LIMITATION OF LIABILITY AND OTHER PROVISIONS REGARDING THE BOARD OF DIRECTORS

8. **General.** The SV2-HOA shall be governed by the following provisions:

8.1 **Board of Directors.** The management and maintenance of the Project and the administration of the affairs of the SV2-HOA shall be conducted by a Board of Directors, who shall be elected as provided in this Neighborhood Declaration and in the Bylaws.

8.2 **Delegation of Powers.** The Board of Directors may appoint committees to assist the Board of Directors. Notwithstanding anything to the contrary, to the extent of any conflict between decisions of Board of Directors and any committee, the decision of the former shall in all respects govern and control.

8.3 **Grant of Powers.** Unless limited by this Neighborhood Declaration or Bylaws, the Board of Directors shall have all the powers, duties and responsibilities as are now or may hereafter be provided herein, including but not limited to the following:

8.3.1 **Rules and Regulations.** To make and enforce all rules and regulations covering the operation and maintenance of the Project and the Lots and Dwelling Units and to levy fines, after notice and an opportunity to be heard, for the violation thereof.

8.3.2 **Common Area and Facilities,** To make and enforce all rules and regulations governing the conduct of all persons upon the Neighborhood Common Area and Facilities, Limited Common Area and Facilities, the Lots and Dwelling Units.

8.3.3 **Common Area Manager.** To engage the services of the Common Area Manager, accountants, attorneys or other employees or agents and to pay to said persons a reasonable compensation therefore.

8.3.4 **Operation of Common Area.** To operate, maintain, repair, improve and replace the Neighborhood Common Area and Facilities and Exclusive Common Area and Facilities.

8.3.5 **Payment of Neighborhood Operating Expenses** To determine, budget for, and pay the Neighborhood Operating Expenses.

8.3.6 **Assessments to Owners.** To assess and collect the proportionate share of Neighborhood Operating Expenses from the Owners.

8.3.7 **Assessments.** To assess and collect Master, Neighborhood, Type Assessments, Benefited Assessment and Individual Assessments.

8.3.8 **Authority to Execute Documents.** To enter into contracts, deeds, leases and/or other written instruments or documents and to authorize the execution and delivery thereof by the appropriate officers.

8.3.9 **Bank Accounts.** To open bank accounts on behalf of the SV2-HOA and to designate the signatories therefore.

8.3.10 **Conveyance of Lot/Dwelling Unit.** To purchase, hold, sell, convey or mortgage any one or more Lots or Dwelling Units in the name of the SV2-HOA or its designee.

8.3.11 **Litigation.** To bring, prosecute and settle litigation for the SV2-HOA and the Project. The prevailing party in any such dispute shall be entitled to recover their costs and actual attorney fees.

8.3.12 **Insurance.** To obtain insurance for the SV2-HOA, Neighborhood Associations, Lots, Dwelling Units, the Common Area and Facilities and the Exclusive Common Area and Facilities, as well as worker's compensation insurance.

8.3.13 **Damage or Destruction.** To repair or restore the Project following damage or destruction or a permanent taking by the power of or power in the nature of eminent domain or by an action or deed in lieu of condemnation not resulting in the removal of the Project from the provisions of this Neighborhood Declaration.

8.3.14 **Disposal of Personal Property.** To own, purchase or lease, hold and sell or otherwise dispose of, on behalf of the Owners, items of personal property necessary to or convenient to the management of the business and affairs of the SV2-HOA and the Board of Directors and to the operation of the Project, including without limitation furniture, furnishings, fixtures, maintenance equipment, appliances and office supplies.

8.3.15 **Books and Records.** To keep adequate books and records and implement the policies and procedures for the inspection of the books and records of the Project by Owners in accordance with the terms of the Bylaws. The SV2-HOA or the Board of Directors shall make available to the Owners, Mortgagees and the holders, insurers and guarantors of the First. Mortgage on any Dwelling Unit current copies of the Neighborhood Declaration, Articles, Bylaws and other rules governing the Project and other books, records and financial statements of the SV2-HOA. "Available" shall mean available for inspection, upon request, during normal business hours or under other reasonable circumstances.

8.3.16 **All Other Accounts.** To do all other acts necessary for the operation and maintenance of the Project, including the maintenance and repair of any Dwelling Unit if the same is necessary to protect or preserve the Project.

8.3.17 **Budgets.** To prepare, adopt, amend and disseminate budgets and, other information from time to time in accordance with the terms of this Neighborhood Declaration, the Bylaws or policies of the Association.

8.3.18 **Common Area Rights-of-Way.** To grant conveyances, easements and rights-of-way over the Common Area and Facilities and Exclusive Common Area and Facilities and to approve signage for the Project.

8.3.19 **Enforcement of Rules.** To enforce the rules, regulations, policies and procedures of the SV2-HOA.

8.3.20 **Delegation of Committees.** Subject to the limitations of applicable law, the Board of Directors may delegate to a committee, a Type Association, Common Area Manager by written agreement all or some of the foregoing powers, duties and responsibilities.

8.4 **Officers, Agents and Employees.** Members of the Board of Directors, the officers and any assistant officers, agents and employees of the SV2-HOA shall not be liable to the Owners as a result of their activities as such for any mistake of judgment, negligence or otherwise, except for their own willful misconduct or bad faith; shall have no personal liability in contract to an Owner or any other person or entity under any agreement, instrument or transaction entered into by them on behalf of the SV2-HOA in their capacity as such; shall have no personal liability in tort to any Owner or any person or entity, direct or imputed, by virtue of acts performed by them, except for their own willful misconduct or bad faith, nor for acts performed for and/or by them in their capacity as such; and shall have no personal liability arising out of the use, misuse or condition of the Project, which might in any way be assessed against or imputed to them as a result or by virtue of their capacity as such.

8.5 **Limitation of Liability.** When a member of the Board of Directors, a committee member or other member volunteer is sued for liability for actions undertaken in his or her role as a member of the Board of Directors (or in another authorized capacity stated above), the SV2-HOA shall indemnify him or her for losses or claims.

8.6 **Subcontracts.** The SV2-HOA acting through the Board of Directors may enter into a contract or management agreement with a Type Association, Neighborhood Common Area Manager, or other Manager for the management of the Project, in whole or in part, which complies with the covenants, conditions and restrictions set forth herein. All such contracts shall be in writing signed by the parties. The person or entity so engaged shall be responsible for managing the Project, or any portion thereof, for the benefit of the SV2-HOA and the Owners or Members, and shall, to the extent permitted by law and by the terms of the agreement with the SV2-HOA, be authorized to perform any of the functions or acts required to be performed by the SV2-HOA itself.

8.7 **Reservation of Rights.** Developer reserves the right, for a period of twenty (20) years following the recording of this Neighborhood Declaration, to unilaterally and without notice to or consent of the Owners or the SV2-HOA, bind the Property and the Buildings or physical improvements to the utilization of the services of any service company, service district or improvement district or any entity or organization acting in a similar capacity, including Developer, its affiliates, successors and assigns (collectively referred to as "Service District"), established for the purpose of providing utility service or quasi-utility services or similar common service to the Property and/or other adjacent or proximate Properties of property, and to include the charges and assessments from such Service District as a "Neighborhood Operating Expense" or "Type Expense," as the case may require.

IX. ARCHITECTURAL REVIEW COMMITTEE

9.1 **Members of the Committee.** An Architectural Review Committee ("ARC") shall be comprised of at least three (3) persons, all of whom shall be appointed as herein provided. The ARC may be a designated and paid agent of the Board, if determined to be in the best interests of the community. A member of the ARC shall hold office until he has resigned or has been removed, but in any event, until said Member's successor has been appointed. Members of the ARC may be removed at any time, with or without cause. In the event that no committee is appointed, the Board shall serve as the ARC. The initial ARC shall consist of the following individuals appointed by the Developer: Amy Pauling, Zach Aland & James Aland.

9.2 **Appointment.** So long as the Declarant owns any Lot or parcel within the Property, the Developer shall have the sole right to appoint and remove all members of the ARC. The ARC shall have the right by a resolution in writing unanimously adopted, to designate one (1) of its members to take any action or perform any duties for and on behalf of the ARC. In the absence of such designation, the vote of any two (2) members of the ARC shall constitute an act of the ARC.

9.3 **Compensation.** The members of the ARC and/or its agent, may receive compensation for services rendered upon execution of an agreement with the Board relative to such compensation, and may be reimbursed for actual expenses incurred by them in the performance of their duties hereunder.

9.4 **Non-Liability.** Neither the ARC, or any member thereof, or the Grantor or any partner, officer, employee, agent, successor or assign thereof, shall be liable to the Association, any Owner or any other person for any loss, damage or injury arising out of or connected with the performance by the ARC of its duties and responsibilities by reason of a mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve an application.

Every person who submits an application to the ARC for approval of plans and specifications agrees, by submission of such an application, and every Owner or Occupant of any Lot agrees, by acquiring title thereto or an interest therein, not to bring any action or suit against the Association, the ARC, or any member thereof, or the Grantor or any officer, partner, employee, agent, successor or assign thereof to recover such damages.

9.5 **Approval Required.** No construction, alteration, modification, removal or destruction of any Improvements of any nature whatsoever, whether real or personal in nature, shall be initiated or be permitted to continue or exist within the Subdivision without the prior express written approval of the ARC. IN ADDITION, THE ARC, BY AND THROUGH THE BOARD, MAY ESTABLISH A SEPARATE AND DISTINCT SET OF RULES ENTITLED **ARCHECTURAL GUIDELINES** WHICH SHALL SUPPLEMENT THIS ARTICLE AND CONTAIN ADDITIONAL RESTRICTIONS CONSISTENT WITH THE DEVELOPMENT OBJECTIVES AND TERMS OF THIS DECLARATION. ALL SUCH IMPROVEMENTS OR ADDITIONS SHALL REQUIRE THAT THE APPROVALS AND PROCEDURES HEREIN TO BE

FOLLOWED.

9.6 **Variances.** The ARC may authorize variances from compliance with the requirements of any conditions and restrictions contained in this Neighborhood Declaration, the ARC Rules/ARC Standards, or any prior approval when, in the sole discretion of the ARC, circumstances such as topography, natural obstructions, aesthetics or environmental considerations or hardship may so require. Such variances must be evidenced in a writing signed by at least two (2) members of the ARC.

If a variance is granted as provided herein, no violation of this Neighborhood Declaration, ARC Rules/ARC Standards or prior approval shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Neighborhood Declaration or the ARC Rules/ARC Standards for any purpose except as to the particular subject matter of the variance thereof and the specific Lot covered thereby. The ARC shall have the right to consider and grant a variance as herein provided either with or without notice to other Owners or a hearing of Owners thereon.

The granting of a variance by the ARC pursuant to this Section shall not relieve the Owner from the obligation to fully comply with the applicable ordinances of Weber County, Utah or any annexing municipality.

9.7 **Application.** To request ARC approval for the construction, alteration, modification, removal or demolition of any Improvements within the Property, the Owner shall submit a written application in a form required by the ARC which must be signed by the Owner and contain all information requested and be accompanied by all other material to be submitted as hereafter provided.

All applications must contain, or have submitted therewith, two (2) copies of each of the following (collectively called "plans and specifications") prepared in accordance with acceptable architectural standards and submitted with the application form, if any, approved by the ARC:

- (a) Site Plan. A site plan showing the location of the Building(s) and all other structures and Improvements including fences and walls on the Lot, Lot drainage and all set backs, curb cuts, driveways, parking areas and other pertinent information relating to the Improvements, at a scale no smaller than 1" = 200'.
- (b) Building Plan. A building plot plan at a scale no less than 1" = 20'. Building elevation drawings of the north, south, east and west sides, and detailed specifications which shall indicate, by sample if required by the ARC, all exterior colors, materials and finishes, including roof, to be used.
- (c) Landscape Plan. A landscape plan for portions of the Lot to be landscaped which - shall show the location, type and size of trees, plants, ground cover, shrubs, berming and mounding, grading, drainage, sprinkler system, fences, freestanding exterior lights, driveways, parking areas and walkways. Builders of more than one

home shall submit prototypical plans for ARC approval - such plans to be approved pursuant to this Neighborhood Declaration.

The ARC may, in its discretion, require the Owner to furnish additional specifications, drawings, material samples or such other information as the ARC, in its sole discretion reasonably exercised, shall deem necessary or convenient for the purpose of assisting the ARC in reviewing and processing the application.

All detached Dwelling Units must have their landscaping (front, rear and sides) fully installed and completed within two (2) summers of closing on the purchase of the Dwelling Unit in accordance with this Neighborhood Declaration and any Design Guidelines of the Association.

9.8 Decision. In reviewing the application and the materials submitted therewith and in reaching a decision thereon, the ARC shall use its best efforts and judgment to assure that all Improvements shall produce and contribute to an orderly and aesthetically complementary design and appearance and be of the quality required to maintain the Subdivision as a quality residential development.

Unless extended by mutual consent of the Owner and the ARC, the ARC shall render its decision with respect to an application within fifteen (15) days after the receipt of a properly submitted and complete application. The decision of the ARC can be in the form of an approval, a conditional approval or denial. If, however, an Owner has not received a decision by the ARC within the above-mentioned fifteen (15) day period, there is no automatic default approval of the Owner's plans. The Owner must then send to the ARC a certified letter requesting a response to its request. If there is no response from the ARC upon confirmation that the ARC did, in fact, receive the certified letter, then the plans shall be approved so long as the application, plans and materials submitted do not result in the construction of a structure in violation of the Association's Design Guidelines.

The decision of the ARC shall be in writing, signed by a member of the ARC, dated, and a copy thereof mailed to the Owner at the address shown on the application.

A conditional approval shall set forth with particularity the conditions upon which the application is approved and the Owner shall be required to affix a copy of said conditions to the working drawings or blueprints which are to be kept on the job site during the entire course of the work to which said plans relate.

A denial of an application shall state with particularity the reasons for such denial.

9.9. Inspection and Complaints. The ARC is empowered to inspect all work in progress on any Lot at any time. Such inspection shall be for the purpose of determining whether the Owner is proceeding in accordance with the approved application or is deviating thereof or is violating this Neighborhood Declaration or the ARC Rules/ARC Standards or the approved plans and specifications.

Each owner or builder shall instruct their respective workers and employees to follow construction only per ARC approved plans. Any modifications or deviations from approved plans must be re-approved by the ARC prior to installation.

The ARC is empowered to receive from other Owners ("Complainant") complaints in writing involving deviations from approved applications or violations of this Neighborhood Declaration or any applicable ARC Rules/ARC Standards. In the event the ARC receives such a complaint from a Complainant, it shall first determine the validity of such complaint by inspection or otherwise.

Should the ARC determine that there has been a substantive deviation or a violation, it shall promptly issue a notice in writing thereof to the Owner and to the Complainant, which notice shall specify the particulars of the deviation or violation and shall demand that the Owner conform to either or both of the following directives:

- (a) The Owner shall immediately cease the activity which constitutes a deviation or violation.
- (b) The Owner shall adhere to the corrective measures set forth in the written notice.

Should the ARC determine there has been no substantive deviation or violation, it shall promptly issue a notice of such determination to the Owner and the Complainant. Notwithstanding any other remedy available to the ARC or the Board, the Board may levy fines/Individual Assessments for deviations or violations of the ARC Rules/ARC Standards of the Association.

9.10 Hearing. An Owner submitting an application under this Section, or served with a written notice of deviation or violation, or a Complainant shall have the right to request and be heard at a hearing held by the ARC for the purpose of presenting facts and information to the ARC. Such hearing must be requested by such party within ten (10) days from the date the written notice of the decision of the ARC is mailed to the Owner (and Complainant) as evidenced by the records of the ARC. The hearing shall be held within thirty (30) days following receipt by the ARC of the request for a hearing, unless the ARC shall extend said period of time because of the unavailability of ARC members.

A hearing may be continued by the ARC for the purpose of further investigation or to receive additional evidence. Upon completion of the hearing, the ARC shall issue a written opinion to the involved parties within ten (10) business days thereafter which opinion shall set forth the findings of the ARC with respect to the matters at issue and shall affirm, modify or rescind its previous decision as contained in the original written notice. If the ARC incurs any costs or expenses in connection with the investigation, processing or hearing on a matter involving a deviation or violation, including the costs of retaining a consultant or consultants to advise the ARC and legal fees, such costs shall be paid by the Complainant unless an Owner is found to be in violation in which event such Owner shall pay all such costs. The payment of such costs shall be enforceable as provided in Section 9.12 below.

9.11 Appeal. Either an Owner or a Complainant shall have the right to appeal to the Board a decision of the ARC on an application with respect to the conditions imposed thereon or a denial thereof, or a decision of the ARC adverse to the Owner or the Complainant reached following a hearing held pursuant to Section 9.10, above, provided, however, that neither an Owner nor a Complainant shall be

entitled to such an appeal with respect to deviations or violations unless said Owner or Complainant, or their authorized representatives, have participated in the ARC hearing.

A notice of appeal shall be in writing and shall be delivered by mail to the Secretary of the Board within ten (10) days from the date of the decision by the ARC. Said notice of appeal shall be dated and shall contain the name of the Owner and the Complainant, if any, and a copy of the written decision or determination of the ARC. The failure of an Owner or Complainant to appeal a decision of the ARC in the manner and within the time herein provided shall terminate all rights of said Owner or Complainant to appeal said decision and it shall be binding and enforceable.

The Board shall fix a date for the hearing of such an appeal which date shall be no later than ten (10) days from the date of receipt of a notice of appeal unless extended by the Board because of the unavailability of Board members. The Owner and Complainant, if any, shall be advised of the time and place of the hearing by a mailed written notice. Written notice of time and place for hearing shall also be served by mail upon each member of the ARC.

The Board may require the Owner or Complainant to provide additional information to facilitate the Board's decision and the failure of such party to comply promptly with such a request shall entitle the Board to deny the appeal, in which event the decision by the ARC shall be considered final and not subject to further appeal. At the hearing the Owner, Complainant, if any, and the ARC, together with their representatives and other witnesses, shall present their position to the Board.

The order of presentation and the evidence to be admitted shall be solely within the discretion of the Board provided, however, that the Owner, the Complainant, if any, and the ARC shall have the opportunity to question and cross-examine witnesses presented by the other. The Owner, the Complainant, if any, and the ARC will have the opportunity to present final argument consistent with rules adopted by the Board for such hearing process. Any party may be represented by an attorney at any hearing by the ARC or the Board.

Upon receiving all of the evidence, oral and documentary, and following the conclusion of the hearing, the Board shall retire to deliberate and shall reconvene at a time and place determined by the Board, at which time the Board shall cast its official ballot and the decision shall be duly recorded in the minutes of the meeting. The Owner, the Complainant, if any, and the ARC members shall be given written notice of the decision which shall be deemed given when deposited in the Dwelling United States mail, postage prepaid and properly addressed.

If the Board incurs any costs or expenses in connection with the investigation, processing or hearing on an appeal, including the costs of retaining a consultant(s) to advise the Board and legal fees, such costs shall be paid by the party(s) filing the appeal unless the decision by the Board constitutes a substantial reversal of the decision of the ARC, in which event such costs shall be paid by the Association. If the party filing the appeal is obligated to pay such costs, payment of the same shall be enforceable as provided in Section 9.12, below.

A decision of the Board of an appeal shall be final and shall not be subject to

reconsideration or further appeal.

9.12 **Enforcement.** The ARC, upon approval by the Board, shall be authorized on behalf and in the name of the Association to levy a fine, commence such legal or equitable proceedings as are determined by it to be necessary or proper to correct or enjoin any activity or condition existing within the Property, the continuation of which violates the provisions of this Neighborhood Declaration, the ARC Rules/ARC Standards or the approved plans and specifications.

The ARC shall not commence such legal or equitable proceedings until a written notice of the deviation or violation has been appropriately prepared and given to the Owner but thereafter the ARC shall have the sole discretion to commence such proceedings.

The authority of the ARC as herein provided shall include the power to retain legal counsel and expert witnesses, pay filing fees, deposition costs, witness fees and all other ordinary and necessary expenses incurred in commencing and carrying out said legal or equitable proceedings, all of which costs shall be paid by the Association.

In the event the ARC and/or Association shall prevail in any such legal or equitable proceedings, the Board may elect to require that all costs and expenses incurred in connection therewith including, but not limited to, attorneys' fees shall be reimbursed to the Association by the Owner against whom said proceedings are filed and upon the failure of said Owner to reimburse the Association within five (5) days after written demand therefor is mailed to the Owner, the Association shall have the right to levy a Individual Assessment against the Owner and the Lot owned by the Owner which Assessment shall be equal to said costs and expenses incurred plus any additional costs and expenses incurred in levying the Assessment. Said Individual Assessment shall be due and payable at such time or in such installments as may be determined by the Board, in its sole discretion.

The failure of the Owner to pay said assessments or any installment thereof when due, shall be enforceable in the manner provided in this Declaration.

9.13. **Additional Damages.** In addition to the costs and expenses to be reimbursed by the Owner or the Complainant, all other costs, expenses and damages determined by the Board to be proximately caused by the deviation or violation or the costs and expenses incurred by the Association to correct the same shall be assessed as a Individual Assessment against the Owner and the Lot owned by said Owner, or the Complainant and the Lot owned by the Complainant, as the case may be, which Individual Assessment shall be due and payable at such time or in such installments as determined by the Board, in its sole discretion. The right of the Board to enforce said Individual Assessment shall be the same as provided in this Declaration.

9.14. **Non-Exclusive Remedy.** The right of the Association to levy an Individual Assessment as described in Sections 9.12 and 9.13, above, shall not be deemed to be an exclusive remedy of the Association and it may, in its sole discretion, without waiver of any other legal or equitable remedy, pursue enforcement of the lien of said Individual Assessments, proceed to collect any amount due directly from the Owner, levy fines against the Owner, and/or pursue

any other remedies available at law or in equity.

9.15 **Private Rights.** The Association shall not have the right to mediate or litigate private disputes between Owners where there is a legal or equitable remedy available to resolve said dispute when, in the sole discretion of the Board, the interests of the Association or a substantial number of the Owners would not be benefited thereby.

X. ASSESSMENTS

10. Neighborhood, Type & Individual Assessments.

10.3 **Covenant to Pay.** Each Owner, unless otherwise exempted herein, by virtue of accepting a deed or other document of conveyance to a Lot or Dwelling Unit, hereby covenants and agrees to pay his share of all Neighborhood Operating Expenses and Type Assessments.

10.1 **Obligation of Members of Neighborhood Association.** Each Member of the Neighborhood Association, unless otherwise exempted herein, shall pay to the SV2-HOA its share of the Neighborhood Operating Expenses (which will also include their obligation to the Master Association).

10.1.1 **Type Assessments/Benefited Assessments.** The Board of Directors may elect to incorporate into the billing for the Neighborhood Assessment any Type Assessment (or Benefited Assessment as defined above). A Type Assessment, if any, may elect to have its Assessment incorporated into the Neighborhood Assessment.

10.2 **Obligation of Developer to Pay Assessments.** The Declarant and/or Developer shall not be required to pay assessments on any Lots owned by the Developer until such time as a Use and Occupancy permit has been granted. The Declarant and/or Developer may, but is not required to, pay any shortfalls in the operating budget of the Association until such time as there are a sufficient number of Lots sold to cover operating expenses.

10.2.1 **Deferred Payment by Developer.** After the date a Use and Occupancy Permit is issued by the proper authorities for any Lot owned by the Declarant, the Declarant and/or Developer may elect to defer payment to the Association of that portion of the Annual Assessment or any other assessment attributable to reserves or any Individual Assessment for the particular Lot until the closing of the sale of the Lot.

10.3 **Individual Assessments.** The SV2-HOA may levy Individual Assessments against a particular Owner of a Lot, Townhouse or Dwelling Unit to pay the costs directly attributable to, or reimbursable by that Owner, equal to the costs incurred by the Association for corrective action, performed pursuant to the provisions of this Neighborhood Declaration, plus administrative, interest and attorney's fees. Fines and penalties levied by the Board of Directors pursuant to this Neighborhood Declaration and the Rules and Regulations may be assessed as an Individual Assessment.

10.4 **Computation of Neighborhood & Type Assessments.** The SV2-HOA shall base the annual Neighborhood & Type Assessments upon budgeted estimates of the Neighborhood & Type Operating Expenses expected to be incurred during the coming calendar year, plus amounts required to establish an adequate reserve.

10.5 **Apportionment of Neighborhood & Type Operating Expenses.** The Neighborhood Operating Expenses shall be allocated equally among all of the Members. The Type Operating Expenses shall be allocated equally among all of the Members of that particular Type.

10.6 **Budget.** The SV2-HOA shall prepare and furnish to each Member an operating budget for the SV2-HOA for the coming calendar year at least thirty (30) days prior to the beginning of each year or at the Annual Owner Meeting. The SV2-HOA shall also prepare and furnish to each Member subject to a Neighborhood and/or Type Assessment an operating budget for the Exclusive Common Area and Facilities and/or maintenance, repair, and replacement of the exterior elements of attached Townhouses or Dwelling Units for the coming calendar year at least thirty (30) days prior to the beginning of each year or at the Annual Owner Meeting.

10.7 **Books and Records.** The SV2-HOA shall (a) keep books and records in accordance with generally accepted accounting practices and (b) prepare monthly billing statements and/or ledgers for each Member detailing its share of the Operating Expenses and any other charges. Members may be charged a reasonable administrative fee for delivery of billing statements and/or ledgers either via mail or email.

10.8 **Payment.** Neighborhood & Type Assessments and each Member's share of the Master Operating Expenses shall be payable in twelve (12) equal monthly installments. Payment of the Assessments must be due to the SV2-HOA on the first day of each month. A late fee of \$25.00 per month shall be assessed on all payments not received by the tenth day of the month. In addition, delinquent accounts shall be charged interest at the rate of 1.5% per month on any outstanding balance on all delinquent accounts. The SV2-HOA may elect to accelerate the entire Annual Neighborhood and Type Assessment in the event of default.

10.9 **Reserves.** The SV2-HOA shall establish and fund a reasonable reserve account or accounts for unforeseen operating expenses, major repairs, and capital improvements. In the event the reserve account(s) fall below an amount considered acceptable by the Board of Directors, then, in its sole discretion and without any additional approval required, the SV2-HOA may restore or replenish the account(s) by an equitable increase in the monthly Neighborhood Assessment, a special assessment, or any combination.

10.10 **Capital Asset Table.** The Board of Directors shall establish and update at least every three years a Capital Asset Table which shall list each major asset and physical Improvements for which the SV2-HOA is responsible, its expected useful life, the present cost of replacement; the estimated cost to replace the item at the end of its useful life, the percentage and amount of each Assessment designated for the reserve account to replace the item at the end of its useful life, and the amount of money currently set aside in the reserve account for the replacement of the item. The Capital Asset Table may be a part of the Analysis Report.

10.11 **Analysis Report.** The Board of Directors shall prepare and update at

least every three years a written Reserve Account Analysis, and make the report(s) available to the Owners at the annual meeting of the Association. Any reserve account study shall include, at a minimum:

10.11.1 **SV2-HOA Repair Obligations.** Identification of the major components which the SV2-HOA is obligated to repair, replace, restore or maintain which, as of the date of the study, have a useful life of less than 30 years.

10.11.2 **Identification of Useful Life.** Identification of the probable remaining useful life of the components identified above, as of the date of the study.

10.11.3 **Cost Estimate.** An estimate of the cost of repair, replacement, restoration or maintenance of each major component identified above, during and at the end of its useful life.

10.11.4 **Estimate of Contribution.** An estimate of the total annual contribution necessary to defray the cost to repair, replace, restore or maintain each major component during and at the end of its useful life, after subtracting total reserve funds as of the date of the study.

10.11.5 **Reserve Account Requirements.** For the purposes of this Section, the term "reserve account requirements" means the estimated funds which the Board of Directors has determined are required to be available at a specified point in time to repair, replace or restore those major components which the SV2-HOA is obligated to maintain.

10.12 **Miscellaneous Provisions.** The making and collection of Neighborhood and/or Type Assessments by the SV2-HOA from Owners of Lots or Dwelling Units and Memberships for their share of Operating Common Expenses shall be made as follows and subject to the following provisions:

10.12.1 **Distribution of Neighborhood Common Profits, Expenses and Voting Rights.** The neighborhood common profits of the Property shall be distributed among, the neighborhood common expenses shall be charged to, and the voting rights shall be available to the Residential Lot, Townhouse and Dwelling Unit Owners on an equal basis regardless of size or value of the Lot, Townhouse or Dwelling Unit.

10.12.2 **Creation of Funds.** At least two separate and distinct funds shall be created and maintained hereunder, one for operating expenses and one for reserve expenses.

10.12.3 **Neighborhood & Type Assessments.** Neighborhood & Type Assessments shall include both Regular Neighborhood & Type Assessments and Special Neighborhood & Type Assessments.

10.12.4 **Operating Common Expenses.** Until the SV2-HOA makes an assessment for Operating Common Expenses, the Developer shall pay all Operating Common Expenses.

10.12.5 **Regular Neighborhood & Type Assessments.** After an assessment has been made by the SV2-HOA, Regular Neighborhood & Type Assessments must be made at least annually, based on a budget adopted at least annually by the SV2-HOA in accordance with the provisions of this Neighborhood

Declaration and the Bylaws.

10.12.6 **Commencement of Regular Neighborhood & Type Assessments.** Regular Neighborhood & Type Assessments shall be levied against each separate Lot, Townhouse or Dwelling Unit, and shall commence as to all Lots, Townhouses or Dwelling Units in the Project on the first day following the closing of the first sale of a Lot, Townhouse or Dwelling Unit.

10.12.7 **Changes in Regular Neighborhood & Type Assessments.** The Board of Directors may make equitable changes in the Regular Neighborhood & Type Assessments during any calendar year provided, however, the SV2-HOA shall provide notice, by first class mail or email to all Owners, of any increase in the Regular Neighborhood & Type Assessments not less than thirty (30) nor more than sixty (60) days prior to the date any modified Regular Common Assessment is due.

10.12.8 **Special Neighborhood & Type Assessments.** In addition to the Regular Neighborhood & Type Assessments, the SV2-HOA may levy in any fiscal year, Special Neighborhood & Type Assessments applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any unforeseen expenditure or the construction or reconstruction, unexpected repair or replacement of a described capital improvement upon any Common Area and Facilities, including the necessary' fixtures and personal property related thereto, and other costs, expenses of operation or shortfalls in the collection of Neighborhood & Type Assessments from the Owners.

10.12.9 **Special Neighborhood & Type Common Assessment.** Any Special Neighborhood & Type Common Assessment levied against a particular Lot, Townhouse or Dwelling Unit shall be levied on an equal basis.

10.12.10 **Providing Notice.** The Board of Directors shall provide notice by first class mail or email to all Owners or Members of any Special Neighborhood & Type Assessments not less than thirty (30) days prior to the date such Assessment is due.

10.12.11 **Payment of Assessments.** All payments of Assessments shall be first applied to accrued interest and late fees and other fees and collection costs, if any, and then to the Assessment payment first due.

10.12.12 **Judgments.** All Neighborhood & Type Assessments to pay a judgment against the SV2-HOA may be made only against the Lots, Townhouses or Dwelling Units in the Project at the time the judgment was entered, in proportion to their liabilities for Operating Common Expenses.

10.12.13 **Misconduct of Owner.** If any Operating Common Expense is caused by the misconduct of any Owner, the SV2-HOA may assess that expense exclusively against such Owner's Lot, Townhouse or Dwelling Unit.

10.12.14 **Unpaid Assessments.** There shall be a lien upon the applicable Lot, Townhouse or Dwelling Unit for all unpaid Assessments, together with late fees, interest and costs (including attorneys' fees) charged pursuant to this Neighborhood Declaration.

10.12.15 **Lien for Unpaid Assessments.** The lien for unpaid Assessments and related charges shall be effective upon recordation in the Office of the County Recorder of a written notice of lien by the Board of Directors, the Common Area Manager, or the attorney for the SV2-HOA.

10.12.16 **Notice of Lien.** The written notice of lien shall set forth the amount of the Assessment, the date(s) due, the amount remaining unpaid, the name of the Owner of the Lot, Townhouse or Dwelling Unit and a description of the Lot, Townhouse or Dwelling Unit.

10.12.17 **Priority of Lien.** Any Assessment levied against each Lot, Townhouse or Dwelling Unit is a debt of the Owner and/or Member at the time the Assessment is made and is collectible as such. If any Owner or Member fails or refuses to pay an Assessment when due, that amount constitutes a lien on the Owner's Lot, Townhouse or Dwelling Unit, which lien is prior to all other liens and encumbrances, recorded or unrecorded, except:

(i) tax and special assessment liens on the Lot, Dwelling Unit or Membership in favor of any assessing Dwelling Unit or special improvement district; and

(ii) encumbrances on the interest of the Owner or Member recorded prior to the date such notice is recorded which by law would be a lien prior to subsequently recorded encumbrances.

Such lien may be enforced by sale or foreclosure conducted in accordance with the provisions of law applicable to the exercise of powers of sale or foreclosure in deeds of trust or mortgages or in any other manner permitted by law. Non-judicial lien foreclosures are permitted.

10.12.18 **Foreclosure.** In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding (including reasonable administrative and attorneys' fees), and such costs and expenses shall be secured by the lien being foreclosed.

10.12.19 **Assessments During Foreclosure.** The Owner shall also be required to pay to the SV2-HOA any Assessments against the Lot, Townhouse or Dwelling Unit which shall become due during the period of foreclosure, and all such Assessments shall be secured by the lien being foreclosed.

10.12.20 **Authority of SV2-HOA.** The Board of Directors shall have the right and power in behalf of the SV2-HOA to bid in at any foreclosure sale and to hold, lease, mortgage or convey the subject Lot, Townhouse or Dwelling Unit in the name of the SV2-HOA.

10.12.21 **Action Against Owner.** In furtherance of such foreclosure rights, the SV2-HOA may bring an action at law against the Owner personally obligated to pay the same or the SV2-HOA may foreclose the lien in accordance with the provisions of Title 57, Chapter 1 of the Utah Code.

10.12.22 **Appointment of Trustee.** The SV2-HOA and each Owner hereby appoints the attorney of the Association (who has been retained by the Association at the time a foreclosure is initiated) as trustee for the purpose of exercising the power of sale in connection with non-judicial foreclosures as provided in Title 57, Chapter 1, Utah Code and made applicable hereto by Title 57, Chapter 8a, Utah Code Ann., or as may be amended from time to time.

10.12.23 **Appointment of Successor Trustee.** The SV2-HOA reserves the right to substitute and appoint a successor trustee as provided for in Title 57, Chapter 1, Utah Code. Each Owner hereby conveys all of its right, title and interest in its Lot, Dwelling Unit or Membership to such trustee, in trust, with a power

of sale, to secure each Owner's obligations under the Neighborhood Declaration, including but not limited to the obligation to pay all Neighborhood & Type Assessments.

10.12.24 **Bid on Lot.** The SV2-HOA may, through its duly authorized agents, bid on the Lot, Dwelling Unit or Townhouse at any foreclosure sale and acquire, hold, lease, mortgage and convey the same.

10.12.25 **Superiority of Lien.** The lien of the SV2-HOA shall be superior to all other liens and encumbrances except liens and encumbrances recorded before recordation of this Neighborhood Declaration, a First Mortgage on a Lot, Dwelling Unit or Membership as provided for herein and Neighborhood & Type Assessments, liens and charges in favor of the state or any political subdivision thereof, for taxes and other governmental assessments or charges past due and unpaid on the Lot, Dwelling Unit or Membership.

10.12.26 **Recovery.** The lien procedures described herein do not prohibit actions to recover sums for which this Neighborhood Declaration creates a lien or prohibit the SV2-HOA from taking a deed in lieu of foreclosure.

10.12.27 **Unpaid Assessments.** The Board of Directors, upon written request, shall furnish to an Owner a statement setting forth the amount of unpaid Assessments against the Lot, Dwelling Unit or Townhouse. This statement must be furnished within ten (10) business days after receipt of the request and is binding on the SV2-HOA, the Board of Directors, the Common Area Manager and every Owner, in favor of all who rely on such statement in good faith.

10.12.28 **Common Assessment.** The amount of any Common Assessment against any Lot, Dwelling Unit or Membership shall be the personal obligation of the Owner.

10.12.29 **Recovery of Judgment.** Suit to recover a money judgment for such personal obligation shall be maintainable by the SV2-HOA without foreclosing or waiving the lien securing the same.

10.12.30 **Owner Waiver of Amenities.** No Owner may avoid or diminish any such personal obligation by waiver of the use and enjoyment of any of the Common Area and Facilities or by abandonment of his Lot, Dwelling Unit or Townhouse or by waiving any services or amenities provided for in this Neighborhood Declaration.

10.12.31 **Recovery of Unpaid Assessments.** In the event of any suit to recover a money judgment of unpaid Neighborhood & Type Assessments hereunder, the involved Owner shall pay the costs and expenses incurred by the SV2-HOA in connection therewith, including reasonable administrative and attorneys' fees.

10.12.32 **Conveyance.** In a voluntary sale, transfer, conveyance, exchange or assignment, the personal obligation of an Owner or Member to pay unpaid Neighborhood & Type Assessments against his Lot, Dwelling Unit or Townhouse shall also pass to his successors in title.

10.12.33 **Sale or Transfer Affecting Lien.** A lien to secure unpaid Assessments shall not be affected by the sale or transfer of the Lot, Dwelling Unit or Townhouse unless foreclosure by a First Mortgagee is involved in which case the foreclosure will extinguish the lien for any Assessments that were payable before the

foreclosure sale, but shall not relieve any subsequent Owner from paying further Assessments.

10.12.34 **Purpose of Reserve Account.** The Board of Directors shall not expend funds designated as reserves for any purpose other than unforeseen expenses or the repair, restoration, replacement or maintenance of major components of the Common Area and Facilities for which the SV2-HOA is responsible and for which the reserve fund was established or for litigation involving such matters.

10.12.35 **Management of Reserve Account Funds.** The Board of Directors shall exercise prudent fiscal management in the timing of restoring any transferred funds to the reserve Account and shall, if necessary, levy a Special Common Assessment to recover the full amount of the expended funds within the time limit specified above.

10.12.36 **Notice to Owner.** If the Owner of a Lot who is leasing the Lot fails to pay an assessment for more than sixty (60) days after the assessment is due, the Board may demand that the tenant pay to the SV2-HOA all future lease payments due to the Owner, beginning with the next monthly or other periodic payment, until the amount due to the SV2-HOA is paid. The Manager or Board shall give the Owner written notice of its intent to demand full payment from the tenant under this subsection.

10.12.37 **Obligations of Owner.** No Owner or Member may waive or otherwise exempt himself or herself from liability for the payment of his share of the Neighborhood & Type Operating Expenses or his Regular or Special Common Neighborhood & Type Assessments provided for herein, including but not limited his non-use or abandonment of his Lot, the Common Area and Facilities.

10.12.38 **Obligations of First Mortgagee.** Anything to the contrary notwithstanding, any first mortgagee who obtains title to a Lot, Townhouse or Dwelling Unit pursuant to the remedies in the mortgage or trust deed or through foreclosure will not be liable for more than six (6) months of the unpaid regularly budgeted assessments, dues or charges Accrued before acquisition of the title to the property by the mortgage, although the first mortgagee will also be liable for any reasonable attorney's fees or costs related to the collection of the unpaid dues. All other grantees who obtain title to a Lot or Dwelling Unit in a voluntary conveyance or pursuant to the remedies in a mortgage or trust deed or through foreclosure shall be jointly and severally liable with the trustor or mortgagor for all unpaid assessments, late fees, default interest and collection costs, including a reasonable attorneys fee, against the Lot or Dwelling Unit for its share of the Common Expenses up to the time of the grant or conveyance, without prejudice to the grantee's rights to recover from the trustor or mortgagor the amounts paid by the grantee.

10.12.39 **Reinvestment Fees (Initial Assessment).**

i) Reinvestment Fee. Each purchaser of a Lot, excluding Developers, shall make initial contributions to the Association in a reasonable amount as determined by the Board. Such amounts paid shall not be deemed to be advance payments of the Assessment, but shall be in addition thereto.

ii) Transfer of Title. The Association, or its agent, may charge a fee for providing Association payoff information needed in connection with financing,

refinancing, or closing of a lot owner's sale of the lot owner's lot, as provided for in Utah Code 57-8a-106. Additional paperwork required in a private sale between an owner and purchaser may be obtained from the Association but may incur additional fees.

XI. INITIAL USE RESTRICTIONS

11.1 **General.** Subject to the Developmental Rights, the Lots, Townhouses, Dwelling Units, Common Area and Facilities, Exclusive Common Area and Facilities, including but not limited to the Limited Common Area, shall be used in accordance with the following restrictions:

11.1.1 **No Commercial Use.** Except to the extent specifically permitted by this Neighborhood Declaration, Owners shall not make any commercial use of the Residential Lots, Townhouses or Dwelling Units, or any portion thereof, with the exception of home occupations which do not increase traffic into the Property, subject to rules and regulations enacted by the Board of Directors; provided, however, that nothing in this subsection shall prevent Developer or an affiliated entity or a duly authorized agent from using any Lot, Townhouse or Dwelling Unit owned or leased by Developer as sales offices and model Dwelling Units or a property management office or for other commercial purposes.

Home based businesses are allowed under limited circumstances, and must comply with community guidelines. The prior written consent of the Board of Directors is required for any type of home based business. No businesses are allowed that have employees of any kind, or that have any customers that are not residents of the community. Examples include, but are not limited to: day care/pre-schools, hair/nail salons, photo studios, auto repair, general office (i.e. mortgage, accounting, legal), call centers, etc. In the event of a dispute between an Owner and the Board of Directors regarding compliance with this subsection, the decision of the Board of Directors shall be final, conclusive and binding.

11.1.2 **Subject to Project Documents.** Use of the Lots, Dwelling Units and Townhouses shall be pursuant to the Project Documents, rules and regulations of the SV2-HOA, as each document may be amended from time to time.

11.1.3 Signs.

11.1.3.1 No for rent or lease signs shall be permitted in the Project.

11.1.3.2 For all attached Dwelling Units, one (1) "for sale" sign may be located in the front of an attached Dwelling Unit and must be professionally prepared and may not exceed a total of 378 square inches.

11.1.3.3 For all detached Dwelling Units (i.e., Estate Homes), one (1) "for sale" sign is permitted in the front yard so long as it does not exceed 378 square inches.

11.1.4 **Owner Rights of Occupation and Use.** Subject to the payment of all Assessments and other charges approved by the SV2-HOA and levied against the Owners and Members, and subject to compliance with the provisions of this

Neighborhood Declaration, and with rules and regulations promulgated from time to time by the SV2-HOA, each Owner and Member shall have the right with all other Owners and Members to occupy and use the Lots, Townhouses, Dwelling Units, Common Area and Facilities, and the Exclusive Common Area and Facilities.

11.1.5 **No Construction.** No Owner shall erect or construct, in the Common Area and Facilities, and Exclusive Common Area and Facilities any structure of any type whatsoever.

11.1.6 **Placement of Outbuildings.** Outbuildings such as sheds are only permitted on Lots with detached Single Family Residences and then only upon approval of the ARC and/or Board of Directors.

11.1.7 **Storage of Vehicles.** No Owner shall place, store, keep or permit to be placed, stored or kept, upon the Common Area and Facilities or Exclusive Common Area and Facilities any personal property, including, but not limited to, vehicles of any type except pursuant to the rules and regulations of the SV2-HOA without the prior written approval of the Board of Directors.

11.1.8 **Unauthorized Activity.** No noxious, offensive, illegal or unauthorized activity shall be carried on in or upon any part of the Project nor shall anything be done on or placed in or upon any part of the Project which is or may become a nuisance or may cause unreasonable embarrassment, disturbance or annoyance to Owners. Normal construction activities shall not be considered to violate the terms and conditions of this Section and by accepting a deed to a Lot, Dwelling Unit or Townhouse, an Owner or Member acknowledges that noises, lights and odors common to recreational and commercial activities, as well as construction activities, may exist on or near the Property, at any time and from time to time.

11.1.9 **Safety.** No activities shall be conducted, or improvements constructed, in or upon any part of the Project which are or may become unsafe or hazardous to any person or property.

11.1.10 **Signage.** Except for United States Flags of reasonable size and as permitted by State and Federal law, no signs, flags or advertising devices of any nature, including, without limitation, for sale or for rent signs, political, informational or directional signs or devices, shall be erected or maintained on any part of the Project, except as may be necessary temporarily to caution or warn of danger, except as may be used by Developer as part of its sales program, except to advertise the Project, or except as otherwise approved by Developer or, after expiration of the Period of Developer's Control, the Board of Directors.

11.1.11 **Restriction of Animals.** No animals, livestock or poultry of any kind shall be raised, bred or kept on any of said Lots, except that dogs, cats, birds or other household pets, two or less in total number, may be kept provided that they are not kept, bred or maintained for any commercial purpose. Notwithstanding the foregoing, no animals or fowl may be kept which result in an annoyance or are obnoxious, by noise, smell or otherwise, to Lot Owners. All pets must be kept within the boundary of the Lot or on a leash attended to by a Person when in the Common Area or Exclusive Common Area. Such pets may not be kept in the Limited Common Area unless attended to at all times by a Person. All pet waste must be immediately cleaned up. The following are not considered household pets; reptiles, rodents, swine, insects and animals weighing fifty (50) pounds or more. This Section may be made more restrictive by Rule of the SV2-HOA. An animal which repeatedly barks or howls, whether or not within the Owner's yard, will be considered to be a nuisance.

No outside dog houses or dog runs are allowed without the prior written consent of the Board of Directors.

11.1.12 **Smoking.** No smoking is permitted within any attached Dwelling Units. Utah Code Annotated, Title 78-13-1(3) has defined second hand tobacco smoke that drifts into a residential unit as a nuisance under the law. Therefore, in order to enforce and maintain the integrity of the covenants of the Association and to promote the health, safety and welfare of the community, all attached Dwelling Units shall be “smoke free” and Owners may be fined or all other legal remedies explored, in the event that smoking occurs within an attached Dwelling Unit.

11.1.13 **Littering.** Owners and Members shall not, and shall not permit their Guests to litter.

11.1.14 **Trash.** No burning trash, garbage or other waste materials will be permitted on the Property. Garbage cans must be screened from view from the streets, except for a period not to exceed 24 hours on the day of garbage collection.

11.1.15 **Window Coverings.** The Board of Directors shall have the right to establish rules requiring interior and exterior window coverings to present a uniform appearance or common design scheme from the exterior of Dwelling Units and Townhouses.

11.1.16 **Reasonable Accommodation.** No Townhouse or Dwelling Unit shall be used to accommodate more persons than it was designed to accommodate comfortably and safely.

11.1.17 **Alterations.** Except as otherwise permitted by this Neighborhood Declaration, no Owner shall, without the prior written consent of the Board of Directors, make or permit to be made any alteration, improvement or addition in or to any Lot, Townhouse or Dwelling Unit.

Examples of improvements that must be submitted for review include but are not limited to the following: swimming pool, tennis courts, basketball court, accessory buildings (storage sheds, detached garage structures, etc.) fencing, landscaping, decks and walls. In addition, any alterations of any kind or nature to the primary structure including changes in colors or materials, awnings, roofing, windows, porches, courtyards, etc. must also be submitted for review. Architectural designs, plans and specifications showing the nature, kind, shape, color, size, materials, and location of all exterior changes or improvements must be submitted for review and approval prior to construction.

11.1.18 **Maintaining Structural Soundness.** No Owner shall, without the prior written consent of the Board of Directors, do any act that would impair the structural soundness or integrity of the Buildings or the safety of property, impair any easement or hereditament appurtenant to the Project.

11.1.19 **Actions Affecting Insurance.** Nothing shall be done or kept in any Lot, Townhouse or Dwelling Unit or in the Common Area and Facilities and Exclusive Common Area and Facilities or any part thereof which would result in cancellation of the insurance on the Project or any part thereof, nor shall anything be done or kept in any Lot, Townhouse or Dwelling Unit which would increase the rate of insurance on the Project or any part thereof over what the SV2-HOA but for such

activity, would pay, without the prior written consent of the Board of Directors.

11.1.20 **Violation of Statutes.** Nothing shall be done or kept in any Lot, Townhouse or Dwelling Unit or in the Common Area and Facilities and Exclusive Common Area and Facilities or any part thereof which would be in violation of any statute or rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body.

11.1.21 **Damage or Waste.** No damage to, or waste of, the Neighborhoods or any part thereof shall be committed by any Owner, Member, Guest, tenant, visitor or invitee, and each Owner or Member shall indemnify and hold the SV2-HOA and the other Owners or Members harmless against all loss resulting from any such damage or waste caused by him or his Guests, tenants, visitors, or invitees.

11.1.22 **Use of Lots.** No Owner shall violate the rules and regulations for the use of Lots, Townhouses, Dwelling Units, Common Area and Facilities and Exclusive Common Area and Facilities as adopted from time to time by the SV2-HOA.

11.1.23 **Rental Restrictions.** At least 60% of Lots, Townhouses and/or Dwelling Units in the Project shall be owner-occupied at all times. The Board of Directors may allow up to 40% of the Lots, Townhouses or Dwelling Units to be leased, rented or occupied by non-owner occupants. This will allow the Association to:

11.1.23.1 Protect the equity of the individual property owners at the Project; and

11.1.23.2 Carry out the purpose for which the Project was formed by preserving the character of the Project as a homogeneous residential community of predominantly owner-occupied Lots and by preventing the Project from assuming the character of an apartment, renter-occupied complex; and

11.1.23.3 Comply with the eligibility, requirements for financing in the primary and secondary mortgage market insofar as such criteria provide that the Project be substantially owner-occupied, the leasing of more than 40% of the Lots, Townhouses or Dwelling Units shall be prohibited. Exceptions may be granted in the case of undue hardship as that term is defined below.

11.1.24 **Owner-Occupancy.** The term "owner-occupied" shall mean a Lot occupied by one of the following:

11.1.24.1 The owner of record, as a primary or secondary residence, as shown in the Office of the County Recorder of Weber County, Utah; or

11.1.24.2 The spouse, children or parents of the owner of record; or

11.1.24.3 The shareholder, partner, member, trustor, beneficiary or other legal representative of an institutional owner (provided, such person holds a beneficial interest in such legal entity of at least 50%) and/or his spouse, children or parents.

11.1.25 **Hardship Exception.** Shall be granted in accordance to applicable Utah law.

11.1.26 **Rental Rules and Regulations.** The Board of Directors shall have the power to make and enforce reasonable rules and regulations and to fine, in accordance with the Neighborhood Declaration and Bylaws, in order to enforce the provisions of this subparagraph. Any transaction which does not comply with this Section shall be voidable at the option of the Board of Directors.

11.1.27 **Business or Corporate Ownership.** In the event that a business entity owns a Lot or Townhome, and such business is a legitimately formed and operating entity in the furtherance of a business objective, then temporary visitors shall not be considered renters for purposes of this Declaration. The Board, however, has broad authority to define, regulate and limit the temporary occupancy of business or corporate guests.

11.1.28 **Leases Subject to Project Documents.** Any lease agreement between an Owner and a renter respecting a Lot, Townhouse or Dwelling Unit shall be subject in all respects to the provisions of this Neighborhood Declaration, the Articles and Bylaws and any failure by the renter to comply with the terms of such documents shall be a default under the lease.

11.1.29 **Leases Must Be In Writing.** All such lease agreements shall be in writing. Other than the foregoing, there is no restriction on the right of any Owner to lease his property.

11.1.30 **Owner Responsible for Renters.** An Owner shall be responsible and liable for any damage to the Project caused by his renter.

11.1.31 **Minimum Lease Terms.** All leases shall be for a minimum term of six (6) months.

11.1.32 **Owner-Occupation and Joint Value Agreement.** By accepting title to a Lot, Dwelling Unit or Townhouse, each Owner (for himself and for his heirs, successors-in-title and assigns) understands, accepts and agrees that this Project is intended to be an owner-occupied subdivision and that "churning," the excessive buying and selling of real estate, in the market or second home ownership has, or may have, an adverse effect upon this stated purpose of the Project; therefore, each Owner covenants and agrees to the following:

11.1.33 **Fractional Ownership.** No owner may own less than twenty-five percent (25%) of a Dwelling Unit.

11.1.34 **Partition of Property.** By accepting title to a Lot, Dwelling Unit or Townhouse, each Owner, for himself and for his heirs, successors-in-title and assigns, does absolutely and forever waive any right to seek or obtain physical partition of the property, or any portion thereof, and does further waive the right to seek or obtain partition of the property by means of the sale of thereof, in whole or in part, unless the institution of such suit or action for partition has been approved by the affirmative vote of the same number of Owners that would be required to sell all or any portion of the Project pursuant to and in compliance with this Neighborhood Declaration and the Developer, if Developer still then retains the right to control the SV2-HOA. Notwithstanding the foregoing, there shall be no limitation on judicial sale in lieu of partition in the case of co-owners of individual Lots, Dwelling Units or Townhouses.

11.1.35 **Validity of Neighborhood Declaration.** It is intended that this Neighborhood Declaration alone, incorporating by reference the Bylaws, Articles,

rules and regulations of the SV2-HOA, shall govern all rights with respect to the use, possession, enjoyment, management and disposition of the Property. accordingly, all rights with respect to the use, possession, enjoyment, management and disposition of the property which an Owner might otherwise have are hereby unconditionally and irrevocably subordinated to this Neighborhood Declaration for so long as this Neighborhood Declaration shall remain in effect.

11.1.36 **Fencing.** All fencing placement, locations, and style, other than that installed by the Declarant in conjunction with the development (if any), shall be in accordance with the conditions and restrictions found herein, and as approved by the Board. This includes but is not limited to Limited Common Areas and adjacent Open Spaces that may be fenced to provide privacy, and pet detainment. As noted herein, a Fence Plan which is available for review, delineates the approved fence placement and Limited Common Area for each lot on the Property. Any and all changes or modifications to said plan and placement must be obtained in writing from the Board prior to a placement of fencing. Approval of said modifications shall be at the sole discretion of the Board.

The following fencing guidelines apply:

- a. All allowed fences shall be constructed of white vinyl fencing material, with style, type, and brand as approved by the Board. If allowed by the City, six (6) foot fences will be the standard. Fencing of more than six (6) feet in height shall not be allowed in the Property without express approval by the Board;
- b. No fence may extend or continue beyond the designated point towards the front of the Lot, unless delineated on the Fence Plan or approved as provided herein.
- c. The fence separating the rear yard areas must be located at the center point between the two buildings, and generally extends perpendicular to the rear/side common fence, or ending point as delineated on the Fence Plan or approved as provided herein.
- d. If fencing is installed on a Lot, a minimum 4' gate is required on the front fence providing access to the rear yard for landscape maintenance and must be accessible on a regular basis for HOA maintenance personnel. If a gate is desired on the perimeter fence by an individual Owner, they must first be approved by the Board for placement, mechanical operation, and locking capabilities.

11.1.37 **Satellite Dishes.** Satellite dishes may be installed in accordance with FCC regulations and ARC prior approval taking into consideration the written guidelines established for or by Board of Directors. Further, Developer may identify the location of satellite ports on each Lot or Dwelling Unit where an acceptable quality signal can be obtain. In the event, the Developer so designates the location of the satellite ports then any satellite dish must be installed at the location of the port.

11.1.38 **Storage and Parking of Motor Vehicles, Trailers and Transportation Devices.** Except as otherwise expressly and specifically stated herein or in a Neighborhood Declaration (and in the event of a conflict the more restrictive provision shall apply), the driving, parking, standing and storing of motor vehicles throughout, the Project shall be subject to the following:

11.1.39 **Parking Rules.** The parking rules and regulations adopted by the Board from time to time;

11.1.40 **Recreational Vehicles.** Recreational vehicles must be stored behind a fence or in a garage, except for loading and unloading which cannot exceed 24 hours in any 72-hour period. In no event may recreation vehicles be stored overnight in any part of the Project containing attached Townhouses or attached Dwelling Units. Recreation vehicles shall include boats, trailers, utility trailers, buses, motor homes, motorcycles, all-terrain vehicles, off road vehicles, snowmobiles, campers, and any other related vehicles defined as recreational vehicles by the Board.

11.1.41 **Parking Obstacles or Dangerous Situations.** No motor vehicle or trailer may be parked or stationed in such a manner so as to create a potentially dangerous situation, so as to create an obstacle or along any street or road, or in front of any garage, walkway, driveway, Building or Lot, or in an unauthorized Common Areas.

11.1.42 **Designated Parking Areas.** Residents may only park their motor vehicles within their garages or in other areas designated by the Declarant or SV2-HOA.

11.1.43 **Parking in Red Zones and Fire Lanes.** Residents may not park their motor vehicles in red zones, fire lanes, guest or visitor parking, or other unauthorized areas.

11.1.44 **Guest Parking.** Guests and visitors shall park their motor vehicles in driveways or Common Area designated for "Guest" or "Visitor" parking.

11.1.45 **Vehicle Repairs.** No Owners or Residents shall repair or restore any vehicle of any kind in, on or about any Lot or the Common Area, except for emergency repairs, and then only for a seventy-two (72) hour period to enable movement thereof to a proper repair facility.

11.1.46 **Parking Garage Alterations Prohibited.** No garage may be altered in such a manner that the number of motor vehicles which may reasonably be parked therein after the alteration is less than the number of motor vehicles that could have been reasonable parked in the garage as originally designed and constructed.

11.1.47 **Vehicle Access.** No motor vehicle shall be parked in such a manner as to inhibit or block access to a Lot, garage, covered parking space, uncovered parking space, entrance, exit, or parking area.

11.1.48 **Parking - Intended Purposes.** All parking areas shall be used solely for the parking and storage of motor vehicles used for personal transportation.

11.1.49 **Damaged or Disabled Vehicles.** Vehicles that are not operational or licensed or which leak fluids must be stored in a garage or behind an enclosure and so as not to be visible from the street or another Lot or Dwelling Unit.

11.1.50 Landscaping.

11.1.51 **Landscaping Installation Deadline.** Full yard landscaping must be installed on all within one (1) year of occupancy. For example, if you purchase your home by September 30th of a given year, the landscaping must be completed by September 30th of the following year.

11.1.52 **Chimes and Musical Sound Makers.** Chimes, dream catchers, bells, tubes or other objects hung vertically outside the Dwelling Unit which ring, strike or otherwise produce musical sounds or harmony heard by other residents are prohibited.

11.1.53 **View Impairment.** The Developer and its affiliates and assigns do not guaranty or represent that any view over and across any property, including any Lot, Dwelling Unit or Building will be preserved without impairment. Neither the Developer nor the ARC shall have the obligation to prune or thin trees or other landscaping except as set forth herein. Any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

11.1.54 **Solar Panels.** Solar panels shall be expressly prohibited unless allowed by resolution of the Board of Directors.

XII. TERMINATION

12.1 **Termination.** The Project may be terminated only by the unanimous agreement of all Owners, giving each Owner one (1) vote for each Lot, Townhouse or Dwelling Unit owned by the Owner.

12.2 **Recording of Notice of Removal.** All of the Owners may remove the Project from the provisions of the Neighborhood Declaration by an instrument duly recorded to that effect, provided that the holders of all liens affecting any of the Lots, Dwelling Units or Townhouses consent or agree by instruments duly recorded that their liens are transferred to the undivided ownership interest of the Owners in the Project. Provided further, as long as Developer has ownership rights in the Project, its consent shall also be required to remove the Project from the provisions of this Neighborhood Declaration. Upon removal of the Project from the provisions of this Neighborhood Declaration, the Project shall be deemed to be owned in common by the Owners.

12.3 **Termination Agreement.** A termination agreement may provide that all of the Project shall be sold following termination. If, pursuant to the agreement, any real estate in the Project is to be sold following termination, the termination agreement shall set forth the minimum terms of the sale.

12.4 **Mortgagees.** Following termination, Mortgagees holding Mortgages on the Lots, Dwelling Units or Memberships which were recorded before termination may enforce those liens in the same manner as any lienholder.

12.5 **Common Area and Facilities.** In the event of the dissolution of the SV2-HOA, the SV2-HOA Properly shall be transferred to a nonprofit corporation, trust, or other entity to be used for such similar purposes, and each owner shall continue to be obligated to make assessment payments for the maintenance and upkeep of the Common Area and Facilities and improvements on a pro rata basis

which conforms substantially with the assessment procedure, terms and conditions set forth herein. To the extent the foregoing is not possible, the Common Area and Facilities shall be sold or disposed of and the proceeds from the sale or disposition shall be distributed to Owners as tenants in common.

XIII. DISPUTE RESOLUTION AND LIMITATION ON LITIGATION

13.1 General. The SV2-HOA, Developer, all Owners and Members subject to this Neighborhood Declaration, and any person not otherwise subject to this Neighborhood Declaration who agrees to submit to this Section (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving the Neighborhoods at the Project, and to avoid the emotional and financial costs of litigation if at all possible. accordingly, each Bound Party covenants and agrees that all claims, grievances or disputes between such Bound Party and any other Bound Party involving Neighborhoods at the Project, including, without limitation, claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of this Neighborhood Declaration or the Project Documents (collectively "Claim"), except for those Exempt Claims authorized under this Section, shall be subject to the procedures set forth herein.

13.2 Exempt Claims. Any Bound Party having an Exempt Claim (as defined below) may submit it to the alternative dispute resolution procedures set forth in this Section, but there shall be no obligation to do so. The following Claims ("Exempt Claims") shall be exempt from the provisions of hereof:

13.2.1 Enforcement of Declaration. Any suit by Developer against any Bound Party to enforce the provisions of this Neighborhood Declaration or to enforce any of Developer's developmental rights set forth in this Neighborhood Declaration, including any defensive or responsive actions by the party against whom this Neighborhood Declaration is taken; Any suit by the SV2-HOA against any Bound Party to enforce the provisions of this Neighborhood Declaration, including any defensive or responsive actions by the party against whom this Neighborhood Declaration is taken;

13.2.2 Temporary Restraining Order. Any suit by the SV2-HOA to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the SV2-HOA's ability to enforce the provisions of this Neighborhood Declaration, including any defensive or responsive actions by the party against whom this Neighborhood Declaration is taken;

13.2.3 Claims Exceeding \$20,000.00. Any suit between Owners (other than the Developer) seeking redress on the basis of a Claim which would constitute a cause of action under the law of the State of Utah in the absence of a claim based on the Project Documents, if the amount in controversy exceeds \$20,000.00; and

13.2.4 Enforcement Regarding Mortgage. Any suit or enforcement action or exercise of any right or remedy under or in respect of any Mortgage, any indebtedness secured by such Mortgage or any other document or agreement executed in connection with such Mortgage or in respect of any right provided herein with respect to such Mortgage.

13.3 Mandatory Procedures for All Other Claims. Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent") other than an Exempt Claim, shall not file suit in any court or initiate any proceeding before any administrative tribunal seeking redress or resolution of such Claim until it has complied with the following procedures:

13.4 Notice. The Claimant shall notify each Respondent in writing of the Claim ("Notice"), stating plainly and concisely:

13.4.1 The nature of the Claim, including date, time, location, person involved, Respondent's role in the Claim;

13.4.2 The basis of the Claim (i.e., the provision of the NEIGHBORHOOD DECLARATION, Project Documents, or other authority out of which the Claim arises);

13.4.3 What Claimant wants Respondent to do or not to do to resolve the Claim; and

13.4.4 That Claimant wishes to resolve the Claim by mutual agreement with Respondent, and is willing to meet in person with Respondent at a mutually agreeable time and place to discuss in good faith ways to resolve the Claim.

13.5 Good Faith Negotiation. Each Claimant and Respondent ("Parties") shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. Upon receipt of a written request from any Party, accompanied by a copy of the Notice, the Board of Directors may appoint a representative to assist the Parties in resolving the dispute by negotiation, if in its discretion it believes its efforts will be beneficial to the Parties and to the welfare of the Project.

13.6 Final and Binding Arbitration. If the Parties do not resolve the Claim through negotiation within thirty (30) days of the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), the Claimant shall have thirty (30) days following Termination of Negotiations to submit the Claim to arbitration in accordance with the Rules of Arbitration maintained on file in the office of the SV2-HOA or the Claim shall be deemed abandoned, and Respondent shall be release and discharged from any and all liability to Claimant arising out of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons not a Party to the foregoing proceedings.

13.7 Arbitration Award. This constitutes an agreement of the Bound Parties to arbitrate all Claims except Exempt Claims and is specifically enforceable under the applicable Utah arbitration law. The arbitration award (the "Award") shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under Utah law.

13.8 Allocation of Costs of Resolving Claims,

13.8.1 Costs Incurred. Each Party shall bear all its own costs incurred prior to and during the proceedings described herein, including the fees of its attorney or other representative.

13.8.2 Costs of Arbitration. Each Party shall share equally in the costs of conducting the arbitration proceeding (collectively, "Arbitration Costs"), except as otherwise provided herein; provided, however, if the Claim is rejected in whole or in

part, the Claimant shall pay all Arbitration Costs, including the costs incurred by the Respondent.

13.9 **Enforcement of Resolution.** If the Parties agree to resolve any Claim through negotiation in accordance herewith and any Party thereafter fails to abide by the terms of such Agreement, or if the Parties agree to accept the Award following arbitration and any Party thereafter fails to comply with such Award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or Award without the need to again comply with the procedures set forth herein. In such event, the party taking action to enforce the agreement or Award shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or Award, including, without limitation, attorneys fees and court costs.

XIV. SECURITY

14.1 **Security.** Neither the SV2-HOA, nor the Declarant nor the Developer shall in any way be considered insurers or guarantors of security within the Project, however, and neither the SV2-HOA, nor the Declarant nor the Developer shall be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. All Owners and his, her or its tenants, Guests and invitees acknowledge that the Declarant, the Developer, the SV2-HOA and its Board of Directors do not represent or warrant that any fire protection system or burglar alarm system designated by or installed in the Project may not be compromised or circumvented, that any fire protection or burglar alarm systems will prevent loss by fire, smoke, burglary, theft, hold-up, or otherwise nor that fire protection or burglar alarm systems will in all cases provide the detection or protection for which the system is designed or intended. Each Owner or his, her or its tenant, guest or invitee acknowledges and understands that the Declarant, the Developer, the Board of Directors and the SV2-HOA are not insurers and that each Owner or his, her or its tenant, guest and invitee assumes all risks for loss or damage to persons or property within the Project and further acknowledges that the Declarant, the Developer, the Board of Directors and the SV2-HOA have made no representations or warranties nor has any Owner or his, her or its tenant, Guest or invitee relied upon any representations or warranties, expressed or implied, including any warranty of merchantability or fitness for any particular purpose, relative to any fire and/or burglar alarm systems recommended or installed or any security measures undertaken within the Project.

XV. AMENDMENT

15.1 **General.** Except as provided elsewhere in this Neighborhood Declaration, including byway of illustration but not limitation to sections pertaining to the annexation or withdrawal of land, any amendment to this Neighborhood Declaration shall require the affirmative written vote or consent of at least sixty-seven percent (67%) of the Total Votes of the SV2-HOA cast either in person or by proxy or by ballot at a meeting duly called for such purpose or otherwise approved in writing by such Owners without a meeting. Any Amendment authorized pursuant to this Section shall be accomplished through the recordation in the Office of the County Recorder of an instrument executed by the SV2-HOA. In such instrument an officer or delegate of the SV2-HOA shall certify that the vote required by this Section for

Amendment has occurred.

15.2 Declarant's Right to Amend Unilaterally Prior to Termination of Declarant's Right to Control. Prior to the expiration of the Period of Developer's Control, Declarant may unilaterally amend this Neighborhood Declaration for any other purpose.

15.3 Unilateral Right to Amend Under Certain Conditions. Notwithstanding anything contained in this Neighborhood Declaration to the contrary, this Neighborhood Declaration may be amended unilaterally at any time and from time to time by Declarant if such Amendment is necessary to correct typographical errors or inadvertent omissions; necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; or reasonably necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots, Dwelling Units or Memberships subject to this Neighborhood Declaration; provided, however, any such Amendment shall not materially adversely affect the title to any Lot, Dwelling Unit or Membership unless any such Owner shall consent thereto in writing.

15.4 To Satisfy Requirements of Lenders. Anything to the contrary notwithstanding, Declarant reserves the unilateral right to amend all or any part of this Neighborhood Declaration to such extent and with such language as may be requested by a State Department of Real Estate (or similar agency), FHA, VA, the FHLMC or FNMA and to further amend to the extent requested by any other federal, state or local governmental agency which requests such an amendment as a condition precedent to such agency's approval of this Neighborhood Declaration or approval of the sale of Lots, Dwelling Units or Memberships, or by any federally chartered lending institution as a condition precedent to lending funds upon the security of any Lot, Dwelling Unit or Membership, or any portions thereof. Any such amendment shall be effected by the recordation by Declarant of an Amendment duly signed by the Declarant, specifying the federal, state or local governmental agency or the federally chartered lending institution requesting the amendment and setting forth the amendatory language requested by such agency or institution. Recordation of such an Amendment shall be deemed conclusive proof of the agency's or institution's request for such an amendment, and such Amendment, when recorded, shall be binding upon all Lots or Dwelling Units and Memberships and all persons having an interest therein. It is the desire of Declarant to retain control of the SV2-HOA and its activities during the anticipated period of planning and development. If any amendment requested pursuant to the provisions of hereof deletes, diminishes or alters such control in any manner whatsoever in the opinion of Declarant, Declarant shall have the unilateral right to amend this Neighborhood Declaration to restore such control.

15.5 Declarant's Rights. No provision of this Neighborhood Declaration reserving or granting to Declarant the Developmental Rights shall be amended without the prior express written consent of Declarant, which consent may be withheld, conditioned or delayed for any reason or for no reason at Declarant's sole and exclusive discretion.

XVI. MISCELLANEOUS

16.1 **Covenants to Run with Land.** This Neighborhood Declaration and all of the covenants, provisions, and requirements hereof are intended to be and shall constitute covenants running with the land or equitable servitudes, and shall be binding upon and shall inure to the benefit of the parties to this Neighborhood Declaration and any other party which has, acquires, or comes to have any interest in the property or which occupies or uses the property, a Lot or Dwelling Unit, and their respective grantees, transferees, heirs, devisees, personal representatives, successors, and assigns. This Neighborhood Declaration and all of the covenants, provisions, and requirements hereof shall be binding upon each Member and Owner, all Lots, Dwelling Units and Townhouses. Each Owner and occupant, by virtue of Accepting a deed or other document of conveyance to, or the possession of any Dwelling Unit, Townhouse or Lot, or use of the property, hereby consents and agrees to be subject to and bound by this Neighborhood Declaration and all of the conditions, covenants, restrictions, easements, provisions and requirements hereof.

16.2 **Partial Invalidity.** The invalidity or unenforceability of any portion of the Neighborhood Declaration shall not affect the validity or enforceability of the remainder hereof, and if any provision of this Neighborhood Declaration or the application thereof to any party to this Neighborhood Declaration, or circumstances should to any extent be invalid, the remainder of this Neighborhood Declaration or the application of such provision to any party to this Neighborhood Declaration, or circumstances other than those as to which a holding of invalidity is reached shall not be effected thereby (unless necessarily conditioned or dependent upon the provisions or circumstances as to which a holding of invalidity is reached), and each provision of this Neighborhood Declaration shall be valid and enforceable to the fullest extent permitted by law.

16.3 **Effective Dates and Duration.** This Neighborhood Declaration and all of the provisions hereof (except any provisions which by their terms may cease to be effective at an earlier time) shall remain effective for a term of one hundred (100) years, unless sooner terminated and extinguished by a written Termination of Neighborhood Declaration filed with the Weber County Recorder, and executed by all of the parties hereto. At the expiration of the initial term, the Neighborhood Declaration shall renew itself for additional twenty-five (25) year periods unless terminated by the unanimous consent of all of the parties hereto.

16.4 **Captions.** The captions or headings which precede the paragraphs of this Neighborhood Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is construed.

16.5 **Construction.** Whenever the context or circumstance so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both other genders.

16.6 **Governing Law.** This Neighborhood Declaration shall be governed by and construed in accordance with the laws of the State of Utah.

16.7 **Enforcement and Attorneys Fees.** In the event of a material violation of this document, the Manager, Board of Directors, or an aggrieved Owner may bring an action for injunctive relief or damages. If this Neighborhood Declaration is referred to an attorney for interpretation or enforcement, the prevailing party shall be entitled to recover his reasonable attorney's fees and costs, regardless of whether

arbitration is commenced or a lawsuit is filed.

16.8 **Professional Manager.** The SV2-HOA and each Type Association must at all times be managed by a professional manager, who must be selected or approved by the SV2-HOA and, during the Period of Developer's Control, the Developer; provided, however, the Board of Directors may delegate some of their management responsibilities to a professional manager or company, and they may employ general laborers, grounds-crew, maintenance personnel, bookkeeping, administrative and clerical workers as necessary to perform their management responsibilities. In the event of a conflict of opinion, the decision of the Developer shall be conclusive, final and binding.

IN WITNESS WHEREOF, the Declarant has hereunto set his hand this ____ day of _____, 2012.

DECLARANT:
AXXION DEVELOPMENT, L.L.C.

By: _____
Name: J.C. Aland
Title: Managing Member

ACKNOWLEDGMENT

STATE OF UTAH)
COUNTY OF _____) ss

The foregoing instrument was acknowledged before me this ____ day of _____, 2012 by J.C. Aland, the Managing Member of AXXION DEVELOPMENT, L.L.C. duly acknowledged to me that said executed the same.

NOTARY PUBLIC

EXHIBIT A
PROPERTY DESCRIPTION

EXHIBIT B
BYLAWS OF
STILLCREEK VILLAGE PHASE 2 HOMEOWNERS ASSOCIATION, INC.
A Nonprofit Corporation of the State of Utah

Pursuant to the provisions of the Utah Nonprofit Corporation Act, the Board of Directors of the Stillcreek Village Phase 2 Homeowners Association, Inc. hereby adopts the following Bylaws of the Stillcreek Village Phase 2 Homeowners Association, Inc.:

ARTICLE I

Name and Principal Office

1.1 Name. The name of the corporation is Stillcreek Village Phase 2 Homeowners Association, Inc. (the "Association").

1.2 Offices. The initial office of the Association will be at 12159 Business Park Drive, Suite 100; Draper, UT 84020.

ARTICLE II

Members and Meetings

2.1 Annual Meetings. The annual meeting of the members of the Association shall be held each year at the office of the Association, beginning in the year following the year in which the Association is incorporated. The Board of Directors may designate some other time, date and place for the annual meeting by giving proper notice of the change in advance of the meeting. The purpose of the annual meeting is the election of officers and Directors, and to consider such other business that comes before the meeting. If the Directors are not elected at the annual meeting, the existing Directors shall continue to serve until their successors are named in a special meeting called for that purpose or until the next annual meeting. The Directors may change the date, time and place of the annual meeting as they see fit by resolution.

2.2 Special Meeting. Special Meetings of the Members may be called by the Board of Directors or by the President as they see fit or by the Members of the Association representing not less than 33% of the total votes of the Association. Any notice of Special Meeting shall state the time, place and date of the meeting, and the matters to be considered at that meeting. When a Special Meeting is called by the Members of the Association, the notice shall be in writing and delivered to the President or the Chairman of the Board.

2.3 Place of Meeting. All meetings will be held within 50 miles of the Association, unless the Members have authorized a meeting to be held elsewhere by written waiver.

2.4 Notice of Meeting. The Board of Directors shall cause written or printed notice of the date, time, place and purposes of all meetings of the Members to be sent to each of the Members not more than 60 but not less than 10 days prior to the meeting. Mailed notice is deemed delivered when it is deposited in the United States Mail, postage prepaid, addressed to the Member at the last known address. Each Member shall register his or her address with the Association, and it shall be the obligation of the Member to provide notice of any change of address to the Association. If no address is registered, the Association may mail that Member's notice to the Secretary of the Association as the agent for the Member. Only one notice will be mailed on each Lot or Unit, so if there are multiple owners, mailing to one owner shall be deemed satisfactory if no such designation, as to which owner shall receive the notice of the meeting, is made.

2.5 Members of Record. Upon purchasing a Lot or Unit in the Association, each owner shall promptly furnish the Association with a copy of the deed or other instrument under which he or she acquired title to the Lot or Unit. For purposes of determining a quorum, determining the persons entitled to vote, and all other matters before a meeting of the Members, the Association may designate a record date, not more than 60 days nor less than 10 days prior to the meeting date to determine the Members entitled to notice and to vote at the meeting. If no record date has been fixed, the record date is deemed to be the date on which notice of the meeting was mailed to the Members. The persons appearing as Members as of the record date are deemed entitled to notice and to vote at the meeting. Persons who become Members subsequent to the record date, or whose ownership is not registered with the Association until subsequent to the record date shall not be entitled to notice, shall not be counted in comprising a quorum and shall not be entitled to vote at the meeting. This shall not preclude a person who acquires his or her Membership subsequent to the record date from voting the interest of his predecessor under a written proxy.

2.6 Quorum. At any meeting of the Members, the presence of members, in person or by proxy, shall constitute a quorum for the transaction of business.

2.7 Proxies. At each meeting of the Members, each Member entitled to cast a vote shall be entitled to vote in person or by written proxy. All proxies must be in writing, signed by the Member as shown on the records of the Association. When a Membership is jointly held, the proxy represents the vote of all of the joint owners of the Membership.

2.8 Voting Rights. With respect to each matter presented to the Members, including the election of Board, each Member will be entitled to cast one vote for each Lot or Unit that he or she owns. Lots or Units with multiple owners will be entitled to only one vote for that Lot or Unit, and in the event that the multiple owners of that Lot or Unit are not able to agree on how to cast the vote, no vote will be cast. The Lot or Unit may be counted as present for purposes of calculating a quorum. If only one of the multiple owners is present at the meeting, the other owners are deemed to have consented to that owner voting the interests of the Lot or Unit. In the event of Lots or Units held subject to Trust Deeds or Mortgages, the Trustor or Mortgagee will be entitled to vote, and the Lender shall have no right to

vote; provided however that when a Lender has taken possession of any Lot or Unit, the Lender shall be deemed to have succeeded to the interest of the Trustor or Mortgagor and shall then be entitled to cast that vote.

2.9 Simple Majority. Any matter placed before the Members for a vote shall pass if there is an affirmative vote of the majority of the Members present (in person or by proxy) at the meeting. Election of Board will be by secret ballot or voice acclamation and shall be by a plurality of those present in person or by proxy. Other matters may be voted by secret ballot or by show of hands or such other means as the officer conducting the meeting shall determine.

2.10 Waiver of Irregularities. Any inaccuracies, irregularities, or errors in any call for a meeting or notice of meeting, inaccuracies or irregularities in the determination of a quorum or acceptance of proxies are deemed waived unless there is an objection stated at the meeting prior to the vote being taken.

2.11 Informal Action. Any act, which is required to be taken or approved at a meeting, may be taken or approved without a formal meeting if a majority of the Members consent to the action in writing prior to the action being taken. The Members may hold meetings for which formal notice was not given if the Members waive notice prior to the meeting.

ARTICLE III

Board of Board

3.1 General Powers. The Board of Directors shall have authority to manage and control the property and affairs of the Association. The Board of Directors may exercise all powers conferred upon them by law, by the Articles of Incorporation, or by these Bylaws, provided however that those powers which are specifically reserved to the Members by law or by the Articles of Incorporation shall be exercised only by the Members. The Board may delegate its powers to officers, managers, or others such of its powers are appropriately delegated.

3.2 Number and Tenure. The initial Board of Directors is three (3) members. Board shall hold office for a term of three (3) years (no two Board terms shall expire in the same year), or until the appointment or election of their successors. Directors may be elected to serve any number of consecutive terms. The Board may be appointed by the Declarant until such time as 100% of the homes have been conveyed. After the Period of Declarant Control, Directors shall be Members of the Association.

3.3 Board Meetings. The Board of Directors shall have at least one meeting per year. The Directors may meet as often as they see fit, and as required by law or the Articles for purposes of approving annual reports, tax returns, and similar matters. Special Meetings may be called by the President or the Chairman, or by a majority of the Board by giving notice to the other Board members.

3.4 Quorum. A quorum at a Board meeting will consist of a simple

majority of the Board. Board members may be counted as present if they are participating in the meeting by telephone. No proxies will be given among Board members. Actions of the Board may only be taken by formal action of the Board, and no individual Directors shall have the authority to act on behalf of the Association. However, during the Period of Declarant Control, the Board of Directors shall have a Managing Member. The initial Managing Member shall be J.C. Aland. The Managing Member is hereby appointed the agent of the Board of Directors and is granted the right, power and authority to act unilaterally on its behalf, anything to the contrary notwithstanding. This office and agency shall expire automatically upon the termination of the Period of Declarant Control.

3.5 Assessment. Assessments of the Members, as called for in the Declaration, shall be levied by the Association. The Directors shall prepare an annual budget for presentation to the Members.

3.6 Compensation. The Board of Directors shall serve without compensation, provided that their reasonable out of pocket expenses for Association business, including the costs of attending board meetings, may be reimbursed by the Association.

3.8 Resignation or Removal. Any Trustee may resign at any time. A Trustee is deemed to have resigned when he or she sells (or otherwise is divested of) his or her Unit and therefore ceases to be a Member of the Association. Any Trustee may be removed prior to the end of his or her term of office by an affirmative vote of 67% of the Members of the Association at a regular or special meeting called for that purpose.

3.9 Vacancies. Vacancies on the Board of Directors will be filled by appointment of a successor by the remainder of the Board. Any such Trustee is to fill the balance of the vacant terms, which he or she has filled, and will stand for election at the expiration of that term.

3.10 Informal Action by Directors. The Directors may take any action they could take in a formal meeting without a formal meeting, provided that the action is authorized in advance in a writing signed by a majority of the Board, and further provided that all of the Directors must have been given an opportunity to approve or reject the action. The Directors may waive notice of meetings by signing written waivers at the time of the meeting. Minutes of all board meetings will be kept, and when a meeting is held without prior notice, the minutes will reflect the written waiver of notice.

ARTICLE IV

Officers

4.1 Number. The officers of the Association shall consist of at least a President, Vice President, and a Secretary/Treasurer. The Members may establish such other officers as they deem appropriate.

4.2 Appointment, Tenure. The officers will be appointed by the Board of Directors at their annual meeting, and all officers serve at the pleasure of the Board and may be removed by a majority vote of the Board in a meeting called for that purpose. After the Period of Declarant Control, all Officers must be Members of the Association.

4.3 Duties of the President. The President shall preside at meetings of the Board of Directors and at meetings of Members. He shall sign, on behalf of the Association, all legal documents approved by the Board, including deeds and mortgages and other contracts. The president shall supervise and be primarily responsible for the day-to-day operation of the Association's affairs, including but not limited to the firing and termination of employees and subordinates. The President shall perform such other duties as assigned by the Board.

4.4 Duties of the Vice President. The Vice President will perform the duties of the President if he or she is not available, and shall perform such other duties as designated by the Board.

4.5 Duties of the Secretary/Treasurer. The Secretary/Treasurer is responsible to keep accurate records of the Members of the Association and the transfer of their interests to others, to keep minutes at the meetings of the Association Members and the Directors, and cause notice of any meetings to be issued as called for in these Bylaws, to file annual reports, and to perform all other assignments of the Board.

4.6 Compensation. The Officers will serve without compensation, provided that their reasonable out of pocket expenses in performing their duties for the Association will be reimbursed. The Board may fix such other compensation as it finds appropriate given the responsibility of the Officers.

ARTICLE V

Indemnification

5.1 Indemnification Against Third Party Actions. The Association may defend and indemnify the Officers and Directors against all actions, claims, and suits brought by third parties against them individually, which arise from the exercise of their obligations and duties as officers and Directors. This shall include all civil, administrative, criminal, or investigative actions whether brought by an individual or a government agency. The indemnification shall extend to the payment of reasonable attorney's fees incurred in the defense of such action, including fees for independent counsel, and the payment of any fine, settlement, or judgment. This indemnity is limited in scope to those acts or omissions arising from the good faith exercise of the authority of the office held, or the discharge of the duties as a Director on behalf of the Association.

5.2 Indemnification Against Member Actions. The Association may defend and indemnify the Officers and Directors against all actions, claims, and suits brought by Members of the Association against them individually which arise from

the exercise of their obligations and duties as officers and Directors. This shall include all civil, administrative, criminal, or investigative actions whether brought by an individual or a governmental agency. The indemnification shall extend to the payment of reasonable attorney's fees incurred in the defense of such action, including fees for independent counsel, and payment of any fine, settlement, or judgment. This indemnity is limited in scope to those acts or omissions arising from the good faith exercise of the authority of the office held, or the discharge of the duties as a Director on behalf of the Association.

5.3 Request for Indemnification. When any Officer, Director or employee of the Association receives notice of any action referred to above, he or she must give notice to the President and to the Board of Directors, stating the nature of the claim, the claimant, and providing all pertinent information about the claim. The Board, in the case of an action against an officer or employee, or against a single Director, may vote to indemnify the officer, employee or Director. In the event that the action is against the Board of Directors as a whole, or names more than a single Director individually, and the claim is entirely covered by and within the policy limits of the Association's insurance coverage, the Board may vote to indemnify itself and the individuals named. In the event that the claim exceeds the limits of any insurance coverage, or is not covered, the Board may not agree to indemnify itself without presenting the matter to the Association for a vote at a special meeting called for that purpose.

ARTICLE VI

Amendment

6.1 Amendment. These Bylaws may be amended by the Members of the Association from time to time as the Members see fit by a majority vote by those in attendance in person or by proxy at a meeting called for that purpose.

Adopted this _____ day of _____ 2017.

President

Attest:

Secretary

EXHIBIT C
DESIGN GUIDELINES OF
STILLCREEK VILLAGE PHASE 2 HOMEOWNERS ASSOCIATION, INC.

DESIGN GUIDELINES

1. Architectural and Related Issues. Since aesthetics, the integrity and harmony of the original design, and the quality of construction and materials throughout the Subdivision is important, all architectural designs, plans, specifications, construction materials, and construction shall be (a) reviewed and approved by the Board, an Architectural Review Committee ("ARC") or its designee and (b) consistent with the other restrictions set forth herein.

2. Architectural Review Committee ("ARC"). While the ARC will not police architectural issues, it will address complaints made to it in writing by Owners and any construction, alteration, or other work done in violation of this Declaration shall be considered to be nonconforming. The members of the ARC may be members of the Board and/or shall be appointed by the Board. Members shall serve until such time as their successors are qualified and appointed.

a) Authority. The ARC has the power and authority to resolve architectural issues.

b) ARC Powers and Standing. Any instrument executed by the ARC or its legal representative that recites facts which, if true, would establish the power and authority to accomplish through such instrument what is purported to be accomplished thereby, shall conclusively establish said power and authority in favor of any person who in good faith and for value relies upon said instrument. The ARC shall constitute a legal entity capable of dealing in its own name or in behalf of two or more Owners. The ARC shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Section and its decisions, including without limitation:

1) Review Plans and Charge Fees. The power and authority to require the review and approval or disapproval of all architectural designs, plans, specifications, construction materials, and construction. The ARC may set fees for the same. The ARC may delegate their responsibilities to a third party.

2) Respond to Complaints. While the ARC will not police the Subdivision, it shall have the power and authority, but not the obligation, to respond to written concerns of Owners about architectural issues.

3) Access. The power and authority to enter into or upon any Lot to make inspections, evaluations or repairs and to do other work necessary for the proper maintenance and operation of the Subdivision or to enforce the decisions of the ARC. Except in the case of an emergency, residents shall be given at least twenty-four (24) hours prior notice before the ARC may exercise this power. All

costs related to said access or repairs shall become an assessment to the Lot owner.

4) Enforcement. The power and authority to issue sanctions, fine, or otherwise individually assess an Owner for a violation of the Design Guidelines or seek other more formal legal remedies, including but not limited to injunctive relief and damages.

5) All other Acts. The power and authority to perform any and all other acts, and to enter into any other transactions, which may be reasonably necessary for the ARC to perform its functions for and in behalf of the Owners.

3. Approval of Plans and Specifications. Architectural Designs, Plans and Specifications showing the nature, kind, shape, color, size, materials, and location of all proposed structures and improvements, including by way of illustration but not limitation all primary Dwellings and Accessory Buildings, shall be submitted to the ARC for review and approval (or disapproval). Designs submitted for approval may be, at the discretion of the ARC, limited to those prepared by architects or by qualified residential designers. In addition, information concerning irrigation systems, drainage, lighting, landscaping and other features of proposed construction shall be submitted as applicable. In reviewing each submission, the ARC may consider the proposed design, harmony of external design with existing structures and the common scheme, the location in relation to surrounding structures, topography, finish grade and elevation, among other things. Decisions of the ARC may be based on purely aesthetic considerations. Each Owner acknowledges that opinions on aesthetic matters are subjective and may vary as ARC members change over time. No Building shall be erected, placed or altered on any Lot until the construction plans and specifications, including a plan showing the location of the structure upon the Lot have been approved by the ARC and it has been determined that the proposed quality of construction, harmony of external design, topography, landscaping, drainage, and finish grade elevation are acceptable. No fence or wall shall be erected, placed or altered on any Lot nearer to any street than the minimum building setback line unless similarly approved. No Dwelling shall be constructed or altered unless it meets the following minimum requirements:

a) Minimum Dwelling Sizes:

Single Family Residential (detached) structures:

1. One Story Dwellings: The required minimum above ground floor finished space shall be 1,400 square feet.
2. Multi-Story Dwellings: The required minimum above ground floor finished space shall be 1,600 square feet.

Patio Home Single Family Residential (detached) structures:

1. One Story Dwellings: The required minimum above ground floor finished space shall be 1,400 square feet.
2. Multi-Story Dwellings: The required minimum above ground floor finished space shall be 1,600 square feet.

Townhome Single Family Residential (attached) structures:

1. The minimum finished floor area for a dwelling unit shall be 1,300 square feet, exclusive of garage.

2. Each Townhome shall have a two (2) car enclosed automobile garage or one (1) enclosed automobile garage and one adjacent parking space.

b) No Lot shall be used except for residential purposes for a single family.

c) Building location must conform to city/county requirements.

d) Minimum Setbacks must conform to city/county requirements.

e) Building Height Restrictions must conform to city/county requirements.

f) Landscape installations: All detached Dwelling Units must have their landscaping (front, rear and sides) fully installed and completed within two (2) summers of closing on the purchase of the Dwelling Unit.

g) Fencing:

1. All allowed fences shall be constructed of white vinyl fencing material, with style, type, and brand as approved by the Board. If allowed by the City, six (6) foot fences will be the standard. Fencing of more than six (6) feet in height shall not be allowed in the Property without express approval by the Board;

2. No fence may extend or continue beyond the designated point towards the front of the Lot, unless delineated on the Fence Plan or approved as provided herein.

3. The fence separating the rear yard areas must be located at the center point between the two buildings, and generally extends perpendicular to the rear/side common fence, or ending point as delineated on the Fence Plan or approved as provided herein.

4. If fencing is installed on a Lot, a minimum 4' gate is required on the front fence providing access to the rear yard for landscape maintenance and must be accessible on a regular basis for HOA maintenance personnel. If a gate is desired on the perimeter fence by an individual Owner, they must first be approved by the Board for placement, mechanical operation, and locking capabilities.

h) For the installation of and maintenance of utilities and drainage facilities, areas are reserved as shown on the recorded plat. Within these easements, no structure, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction or flow of drainage channels in the area, or which may obstruct or retard the flow of water through drainage channels in the easement. The easement area of each of the Lots and all improvements in it shall be maintained continuously by the owner of the Lot, except for those improvements for which a public authority or utility company is responsible.

i) Designs submitted for approval may be, at the discretion of the ARC, limited to those prepared by architects or by qualified residential designers of outstanding ability whose previous work may be reviewed as a part of the approval process.